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ABSTRACT

Presented is the transcript of hearings (June 21 and 22, 1977) before the subcommittee on the handicapped of the committee on human resources on the implementation of the Education for All Handicapped Children Act of 1975 (Public Law 94-142). Included are the texts of P.L. 94-142 and Senate Bill 725, a bill to extend certain programs (centers and services, personnel training, research, and instructional media) under P.L. 94-142. Prepared statements are included of representatives of such organizations as the American Coalition of Citizens with Disabilities, the Council for Exceptional Children, and the Education Commission of the States; and of individuals such as C. Kline, secretary of education of Pennsylvania, H. Williams, U.S. senator from New Jersey, and T. Luken, a representative in Congress from Ohio. Additional information provided includes various articles and publications providing historical background and statistical data, communications concerning the law, and questions asked by Senator J. Randolph of various witnesses, companies, and agencies, with responses. (DB)

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EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1977

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON HUMAN RESOURCES
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

EXAMINATION OF THE IMPLEMENTATION OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975 (PUBLIC LAW 94-142)

JUNE 21 AND 22, 1977

BEST COPY AVAILABLE

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EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1977

TUESDAY, JUNE 21, 1977

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED
OF THE COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 4232, Dirksen Senate Office Building, Senator Jennings Randolph (chairman of the subcommittee) presiding.

Present: Senators Randolph and Stafford.

OPENING STATEMENT OF SENATOR RANDOLPH

Senator RANDOLPH. Good morning to our guests, to those who are participating in the hearing, and to all of those who have a continuing interest in and concern about, the matters to be discussed in the subcommittee.

On November 29, 1975, a law was signed by the President, Public Law 94–142, the Education for All Handicapped Children Act of 1975. Handicapped children were at last assured the right to a free appropriate public education.

This landmark law, Public Law 94–142, requires that States provide a free appropriate public education to all handicapped children aged 3 to 18 by September 1, 1978, and all handicapped children aged 3 to 21 by September 1, 1980.

Recently, the Senate considered Senate bill 725, an extension of the discretionary programs authorized by the Education of the Handicapped Act. The programs continued by S. 725 undergird and provide the foundation for the State grant program authorized by Public Law 94–142. During the time the Senate was considering S. 725, concerns regarding the implementation of Public Law 94–142 were brought to the attention of this subcommittee. However, since the discretionary programs extended by S. 725 would otherwise expire at the end of fiscal 1977, the subcommittee felt it best to expedite the continuation of the discretionary programs. Interested parties were requested to hold their recommendations regarding Public Law 94–142 until such time as the subcommittee could hold separate hearings to explore the various issues.

The purpose of these hearings is to determine whether the problems brought to the subcommittee's attention are statutory in nature and require amendments to the law.

At this point we will include in the record texts of the bill and public law mentioned.

[The texts of S. 725 and Public Law 94–142 follow:]

95TH CONGRESS
1ST SESSION

S. 725

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11 (legislative day, FEBRUARY 1), 1977

Mr. RANDOLPH (for himself, Mr. DURKIN, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. PELL, Mr. SCHWEIKER, Mr. STAFFORD, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on Human Resources

---

A BILL

To extend certain programs under the Education of the Handicapped Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education of the Handicapped Amendments of 1977".

CENTERS AND SERVICES

SEC. 2. Section 627 of the Education of the Handicapped Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 627. There are authorized to be appropriated to carry out the provisions of section 621, $19,000,000 for the

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fiscal year 1977 and for each of the two succeeding fiscal years, $21,000,000 for fiscal year 1980, $24,000,000 for fiscal years 1981, and $25,000,000 for fiscal year 1982. There are authorized to be appropriated to carry out the provisions of section 622, $20,000,000 for the fiscal year 1977, $22,000,000 for fiscal year 1978, $24,000,000 for fiscal year 1979, $26,000,000 for fiscal year 1980, $29,000,000 for fiscal year 1981, and $32,000,000 for fiscal year 1982. There are authorized to be appropriated to carry out the provisions of section 623, $38,000,000 for the fiscal year 1977, $25,000,000 for fiscal year 1978 and for each of the two succeeding fiscal years, $20,000,000 for fiscal year 1981 and for the succeeding fiscal year. There are authorized to be appropriated to carry out the provisions of section 625, $8,000,000 for the fiscal year 1977, $10,000,000 for the fiscal year 1978, $12,000,000 for the fiscal year 1979, $14,000,000 for the fiscal year 1980, and $16,000,000 for the fiscal year 1981 and for the succeeding fiscal year.".

PERSONNEL TRAINING

SEC. 3. Section 636 of the Education of the Handicapped Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 636. There are authorized to be appropriated for carrying out the provisions of this part (other than section

633) $54,000,000 for the fiscal year 1977, $75,000,000 for the fiscal year 1978, $80,000,000 for the fiscal year 1979, $85,000,000 for the fiscal year 1980, $90,000,000 for the fiscal year 1981, and $95,000,000 for the fiscal year 1982. There are authorized to be appropriated to carry out the provisions of section 633, $1,000,000 for the fiscal year 1977, $2,000,000 for the fiscal year 1978 and the succeeding fiscal year, and $2,500,000 for the fiscal year 1980 and each of the two succeeding fiscal years.".

RESEARCH

SEC. 4. Section 644 of the Education of the Handicapped Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 644. For the purposes of carrying out this part, there are authorized to be appropriated $20,000,000 for the fiscal year 1977 and the succeeding fiscal year, $22,000,000 for the fiscal year 1979, $24,000,000 for the fiscal year 1980, $26,000,000 for the fiscal year 1981, and $28,000,000 for the fiscal year 1982.".

INSTRUCTIONAL MEDIA

SEC. 5. Section 654 of the Education of the Handicapped Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 654. For the purpose of carrying out this part there are authorized to be appropriated not to exceed $22,-

000,000 for the fiscal year 1977, $24,000,000 for the fiscal year 1978, $25,000,000 for the fiscal year 1979, $27,000,000 for the fiscal year 1980, $29,000,000 for the fiscal year 1981 and for each succeeding fiscal year thereafter.".

Public Law 94-142
94th Congress, S. 6
November 29, 1975

An Act

To amend the Education of the Handicapped Act to provide educational assistance to all handicapped children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education for All Handicapped Children Act of 1975".

Education for All Handicapped Children Act of 1975.
20 USC 1401 note.

EXTENSION OF EXISTING LAW

SEC. 2. (a)(1)(A) Section 611(b)(2) of the Education of the Handicapped Act (20 U.S.C. 1411(b)(2)) (hereinafter in this Act referred to as the "Act"), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(B) Section 611(c)(1) of the Act (20 U.S.C. 1411(c)(1)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(2) Section 611(c)(2) of the Act (20 U.S.C. 1411(c)(2)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977", and by striking out "2 per centum" each place it appears therein and inserting in lieu thereof "1 per centum".

(3) Section 611(d) of the Act (20 U.S.C. 1411(d)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977".

(4) Section 612(a) of the Act (20 U.S.C. 1412(a)), as in effect during the fiscal years 1976 and 1977, is amended—

(A) by striking out "year ending June 30, 1975" and inserting in lieu thereof "years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977"; and

(B) by striking out "fiscal year 1974" and inserting in lieu thereof "preceding fiscal year".

(b)(1) Section 614(a) of the Education Amendments of 1974 (Public Law 93–380; 88 Stat. 580) is amended by striking out "fiscal year 1975" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

20 USC 1411 note.

(2) Section 614(b) of the Education Amendments of 1974 (Public Law 93–380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

20 USC 1411 note.

20 USC 1413 note.

(3) Section 614(c) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

Ante, p. 773.

(c) Section 612(a) of the Act, as in effect during the fiscal years 1976 and 1977, and as amended by subsection (a)(4), is amended by inserting immediately before the period at the end thereof the following: ", or $300,000, whichever is greater".

20 USC 1412.

(d) Section 612 of the Act (20 U.S.C. 1411), as in effect during the fiscal years 1976 and 1977, is amended by adding at the end thereof the following new subsection:

Publication in Federal Register.

"(d) The Commissioner shall, no later than one hundred twenty days after the date of the enactment of the Education for All Handicapped Children Act of 1975, prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions of this section and section 611.".

Ante, p. 773.
20 USC 1411 note.

(e) Notwithstanding the provisions of section 611 of the Act, as in effect during the fiscal years 1976 and 1977, there are authorized to be appropriated $100,000,000 for the fiscal year 1976, such sums as may be necessary for the period beginning July 1, 1976, and ending September 30, 1976, and $200,000,000 for the fiscal year 1977, to carry out the provisions of part B of the Act, as in effect during such fiscal years.

STATEMENT OF FINDINGS AND PURPOSE

20 USC 1401 note.

Sec. 3. (a) Section 601 of the Act (20 U.S.C. 1401) is amended by inserting "(a)" immediately before "This title" and by adding at the end thereof the following new subsections:

"(b) The Congress finds that—

"(1) there are more than eight million handicapped children in the United States today;

"(2) the special educational needs of such children are not being fully met;

"(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

"(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

"(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

"(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

"(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

"(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

"(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

"(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.".

Ante, p. 773.

(b) The heading for section 601 of the Act (20 U.S.C. 1401) is amended to read as follows:

"SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE".

DEFINITIONS

SEC. 4. (a) Section 602 of the Act (20 U.S.C. 1402) is amended—

20 USC 1401.

(1) in paragraph (1) thereof, by striking out "crippled" and inserting in lieu thereof "orthopedically impaired", and by inserting immediately after "impaired children" the following: ", or children with specific learning disabilities,";

(2) in paragraph (5) thereof, by inserting immediately after "instructional materials," the following: "telecommunications, sensory, and other technological aids and devices,";

(3) in the last sentence of paragraph (15) thereof, by inserting immediately after "environmental" the following: ", cultural, or economic"; and

(4) by adding at the end thereof the following new paragraphs:

"(16) The term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

"(17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

"(18) The term 'free appropriate public education' means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5).

"(19) The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

"(20) The term 'excess costs' means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this part or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs which would qualify for assistance under this part or under such titles.

20 USC 241a note, 881.

"(21) The term 'native language' has the meaning given that term by section 703(a)(2) of the Bilingual Education Act (20 U.S.C. 880b-1(a)(2)).

"(22) The term 'intermediate educational unit' means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.".

(b) The heading for section 602 of the Act (20 U.S.C. 1402) is amended to read as follows:

"DEFINITIONS".

ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

SEC. 5. (a) Part B of the Act (20 U.S.C. 1411 et seq.) is amended to read as follows:

"PART B—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

"ENTITLEMENTS AND ALLOCATIONS

20 USC 1411. Post, p. 793.

"SEC. 611. (a)(1) Except as provided in paragraph (3) and in section 619, the maximum amount of the grant to which a State is entitled under this part for any fiscal year shall be equal to—

"(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services;

multiplied by—

"(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

"(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

"(2) For the purpose of this subsection and subsection (b) through subsection (e), the term 'State' does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"State."

"(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the average of the number of such children receiving special education and related services on October 1 and February 1 of the fiscal year preceding the fiscal year for which the determination is made.

"(4) For purposes of paragraph (1)(B), the term 'average per pupil expenditure', in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"Average per pupil expenditure."

"(5)(A) In determining the allotment of each State under paragraph (1), the Commissioner may not count—

"(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such State;

"(ii) as part of such percentage, children with specific learning disabilities to the extent the number of such children is greater than one-sixth of such percentage; and

"(iii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

20 USC 241c-1.

"(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

"(b)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1978—

"(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 612(3).

"(2) Of the funds which any State may use under paragraph (1)(A)—

"(A) an amount which is equal to the greater of—

"(i) 5 per centum of the total amount of funds received under this part by such State; or

"(ii) $200,000;

may be used by such State for administrative costs related to carrying out sections 612 and 613;

"(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

"(c)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

"(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) except as provided in paragraph (3), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 612(3).

"(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

"(i) an amount which is equal to the greater of—

"(I) 5 per centum of the total amount of funds received under this part by such State; or

"(II) $200,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 612 and 613; and

"(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

"(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

"(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

"(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

"(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than $7,500 for such fiscal year; or

"(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

“(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

“(d) From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B), as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(1)(B) or subsection (c)(1)(B), as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this part.

“(e)(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

“(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Commissioner in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

Ante, p. 774.

“(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

“(f)(1) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this part for that fiscal year.

“(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Commissioner an application which meets the applicable requirements of section 614(a) and which is approved by the Commissioner. The provisions of section 616 shall apply to any such application.

"(g) (1) If the sums appropriated for any fiscal year for making payments to States under this part are not sufficient to pay in full the total amounts which all States are entitled to receive under this part for such fiscal year, the maximum amounts which all States are entitled to receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d), which it estimates that it will expend in accordance with the provisions of this part. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies or intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

"ELIGIBILITY

20 USC 1412. "Sec. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

"(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

"(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

"(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

"(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

"(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

"(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

"(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

"(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

"(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

"(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

Administration.

"(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

Notice, hearings.

"(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

"STATE PLANS

20 USC 1413.

"Sec. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

"(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

"(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305(b)(8) of such Act (20 U.S.C. 844a(b)(8)) or its successor authority, and section 122(a)(4)(B) of the Vocational Education Act of 1963 (20 U.S.C. 1262(a)(4)(B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

20 USC 241c-1.

"(3) set forth, consistent with the purposes of this Act, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

"(4) set forth policies and procedures to assure—

"(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

"(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

"(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

"(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

Reports and records.

"(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

Notice, hearings.

"(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

"(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

"(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

Evaluation.

"(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 617; and

State advisory panel.

"(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

"(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

"(c) The Commissioner shall approve any State plan and any modification thereof which—

"(1) is submitted by a State eligible in accordance with section 612; and

"(2) meets the requirements of subsection (a) and subsection (b).

Notice, hearings.

The Commissioner shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

"APPLICATION

20 USC 1414.

"Sec. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

"(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

"(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

"(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

"(C) establish a goal of providing full educational opportunities to all handicapped children, including—

"(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

"(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

"(iii) the participation and consultation of the parents or guardian of such children; and

"(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

"(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

"(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

"(2) provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part;

"(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

Recordkeeping.

"(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subclause (A);

Public information, availability.

"(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

"(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

"(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

"(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C), and 615.

Application approval.

"(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Commissioner under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

Notice, hearing.

"(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

"(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

"(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

"(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

"(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

"(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

"(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

Rules and regulations.

"(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

"(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

"(d) Whenever a State educational agency determines that a local educational agency—

"(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

"(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

"(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

Funds, reallocation.

"(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

"(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

"PROCEDURAL SAFEGUARDS

20 USC 1415.

"SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

Hearing.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

Civil action.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

District courts jurisdiction.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

Notice, hearing.
20 USC 1416.

"Sec. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

"(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Commissioner (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Commissioner withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

Petition for review.

"(b)(1) If any State is dissatisfied with the Commissioner's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"ADMINISTRATION

"Sec. 617. (a)(1) In carrying out his duties under this part, the Commissioner shall— 20 USC 1417.

"(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

"(B) provide such short-term training programs and institutes as are necessary;

"(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

"(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975, provide certification of the actual number of handicapped children receiving special education and related services in such State.

"(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this part in order to assure equity among the States. Regulations.

"(b) In carrying out the provisions of this part, the Commissioner (and the Secretary, in carrying out the provisions of subsection (c)) shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

"(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Commissioner and by State and local educational agencies pursuant to the provisions of this part. 20 USC 1232g.

"(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out his duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time. 5 USC 5101, 5331.

"EVALUATION

"Sec. 618. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children. 20 USC 1418.

"(b) The Commissioner shall conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part. In carrying out his responsibilities under this section, the Commissioner shall—

"(1) through the National Center for Education Statistics, provide to the appropriate committees of each House of the Congress and to the general public at least annually, and shall update at least annually, programmatic information concerning programs and projects assisted under this part and other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this part, including—

"(A) the number of handicapped children in each State, within each disability, who require special education and related services;

"(B) the number of handicapped children in each State, within each disability, receiving a free appropriate public education and the number of handicapped children who need and are not receiving a free appropriate public education in each such State;

"(C) the number of handicapped children in each State, within each disability, who are participating in regular educational programs, consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv), and the number of handicapped children who have been placed in separate classes or separate school facilities, or who have been otherwise removed from the regular education environment;

"(D) the number of handicapped children who are enrolled in public or private institutions in each State and who are receiving a free appropriate public education, and the number of handicapped children who are in such institutions and who are not receiving a free appropriate public education;

"(E) the amount of Federal, State, and local expenditures in each State specifically available for special education and related services; and

"(F) the number of personnel, by disability category, employed in the education of handicapped children, and the estimated number of additional personnel needed to adequately carry out the policy established by this Act; and

"(2) provide for the evaluation of programs and projects assisted under this part through—

"(A) the development of effective methods and procedures for evaluation;

"(B) the testing and validation of such evaluation methods and procedures; and

"(C) conducting actual evaluation studies designed to test the effectiveness of such programs and projects.

"(c) In developing and furnishing information under subclause (E) of clause (1) of subsection (b), the Commissioner may base such information upon a sampling of data available from State agencies, including the State educational agencies, and local educational agencies.

Report, transmittal to congressional committees.

"(d)(1) Not later than one hundred twenty days after the close of each fiscal year, the Commissioner shall transmit to the appropriate committees of each House of the Congress a report on the progress being made toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted under subsection (b).

Contents.

"(2) The Commissioner shall include in each such report—

"(A) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities;

"(B) any recommendations for change in the provisions of this part, or any other Federal law providing support for the education of handicapped children; and

"(C) an evaluation of the effectiveness of the procedures undertaken by each such agency or unit to prevent erroneous classification of children as eligible to be counted under section 611, including actions undertaken by the Commissioner to carry out provisions of this Act relating to such erroneous classification.

In order to carry out such analyses and evaluations, the Commissioner shall conduct a statistically valid survey for assessing the effectiveness of individualized educational programs.

"(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section. **Appropriation authorization.**

"INCENTIVE GRANTS

"SEC. 619. (a) The Commissioner shall make a grant to any State which— **20 USC 1419.**

"(1) has met the eligibility requirements of section 612;

"(2) has a State plan approved under section 613; and

"(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 611(a)(1)(A).

The maximum amount of the grant for each fiscal year which a State may receive under this section shall be $300 for each such child in that State.

"(b) Each State which—

"(1) has met the eligibility requirements of section 612,

"(2) has a State plan approved under section 613, and

"(3) desires to receive a grant under this section,

shall make an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require.

"(c) The Commissioner shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section.

"(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this part for such fiscal year, the maximum amounts which all States may receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(e) In addition to the sums necessary to pay the entitlements under section 611, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section. **Appropriation authorization.**

"PAYMENTS

"SEC. 620. (a) The Commissioner shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments **20 USC 1420.**

to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

"(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.".

Regulations.
20 USC 1411 note.

(b) (1) The Commissioner of Education shall, no later than one year after the effective date of this subsection, prescribe—

(A) regulations which establish specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability for purposes of designating children with specific learning disabilities;

(B) regulations which establish and describe diagnostic procedures which shall be used in determining whether a particular child has a disorder or condition which places such child in the category of children with specific learning disabilities; and

(C) regulations which establish monitoring procedures which will be used to determine if State educational agencies, local educational agencies, and intermediate educational units are complying with the criteria established under clause (A) and clause (B).

Proposed regulation, submittal to congressional committees.
Publication in Federal Register.

(2) The Commissioner shall submit any proposed regulation written under paragraph (1) to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate, for review and comment by each such committee, at least fifteen days before such regulation is published in the Federal Register.

20 USC 402.

(3) If the Commissioner determines, as a result of the promulgation of regulations under paragraph (1), that changes are necessary in the definition of the term "children with specific learning disabilities", as such term is defined by section 602(15) of the Act, he shall submit recommendations for legislation with respect to such changes to each House of the Congress.

Definitions.

(4) For purposes of this subsection:

(A) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or environmental, cultural, or economic disadvantage.

(B) The term "Commissioner" means the Commissioner of Education.

20 USC 1411.

(c) Effective on the date upon which final regulations prescribed by the Commissioner of Education under subsection (b) take effect, the amendment made by subsection (a) is amended, in subparagraph (A) of section 611(a)(5) (as such subparagraph would take effect on the effective date of subsection (a)), by adding "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

AMENDMENTS WITH RESPECT TO EMPLOYMENT OF HANDICAPPED INDIVIDUALS, REMOVAL OF ARCHITECTURAL BARRIERS, AND MEDIA CENTERS

SEC. 6. (a) Part A of the Act is amended by inserting after section 605 thereof the following new sections: 20 USC 1404.

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act. 20 USC 1405.

"GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

"SEC. 607. (a) Upon application by any State or local educational agency or intermediate educational unit the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers. 20 USC 1406.

"(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.". Appropriation authorization.

(b) Section 653 of the Act (20 U.S.C. 1453) is amended to read as follows:

"CENTERS ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

"SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

"(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

"(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

"(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

"(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

"(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694). 80 Stat. 1027.

"(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.". Report to Congress.

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

SEC. 7. (a)(1) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by inserting "final" immediately before "standard" each place it appears therein.

(2) The third sentence of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) is amended by striking out "proposed" and inserting in lieu thereof "final".

(3) The fourth and last sentences of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) each are amended by inserting "final" immediately before "standard".

(b) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by adding at the end thereof the following new sentence: "Failure of the Congress to adopt such a concurrent resolution with respect to any such final standard, rule, regulation, or requirement prescribed under any such Act, shall not represent, with respect to such final standard, rule, regulation, or requirement, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.".

EFFECTIVE DATES

20 USC 1411 note.

SEC. 8. (a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) shall take effect on July 1, 1975.

(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 shall take effect on the date of the enactment of this Act.

(c) The amendments made by sections 4 and 5(a) shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act, as amended by this Act, section 617(a)(1)(D) of the Act, as amended by this Act, section 617(b) of the Act, as amended by this Act, and section 618(a) of the Act, as amended by this Act, shall take effect on the date of the enactment of this Act.

(d) The provisions of section 5(b) shall take effect on the date of the enactment of this Act.

Approved November 29, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-332 accompanying H.R. 7217 (Comm. on Education and Labor) and 94-664 (Comm. of Conference).
SENATE REPORTS: No. 94-168 (Comm. on Labor and Public Welfare) and No. 94-455 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 121 (1975):
- June 18, considered and passed Senate.
- July 21, 29, considered and passed House, amended, in lieu of H.R. 7217.
- Nov. 18, House agreed to conference report.
- Nov. 19, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 49:
- Dec. 2, Presidential statement.

Senator **Randolph**. Today we have qualified witnesses who are able to discuss these matters with us. First, however, we will receive for the record a statement by Senator Williams, the chairman of the Committee on Human Resources.

[Senator Williams' statement follows:]

Prepared Statement of Senator Harrison A. Williams, Jr.

Senator **Williams**. We begin today several sessions of oversight hearings to examine the implementation of Public Law 94–142, the Education for All Handicapped Children Act. Signed into law on November 29, 1975, this landmark law goes into effect this coming October 1, 3 short months away. It is fitting, I think, that we get together to see the progress which is being made to bring States to compliance with the law so that each handicapped child across this Nation will have the protections guaranteed by this act and by the Constitution.

Since the time of the signing of the Education for All Handicapped Children Act, I have heard from so many parents of handicapped children from throughout the States. Their thanks and their happiness at knowing that this Federal law would back up their rights at the school district level were a pleasure to receive. It is time that we begin talking, I believe, about ways that we can make their efforts easier at the school, school district, and State level. We need to have adequate training programs so that these parents and advocates can help enforce the protections of the law and we need to assure that the States and localities fully open their decisionmaking so that these parents and advocates can be assured that their children's rights are protected.

Let me say at the outset that I know of no reason why this law should be amended at this time. I know that various individuals and groups have reviewed the law and concluded, from their perspective, that the law should be amended. As with any law, the Education for All Handicapped Children Act was built on compromise and not all features will be pleasing to everyone. However, each provision was considered at length by this subcommittee, as the chairman knows, and by the comparable subcommittee on the House side.

I welcome these hearings today and tomorrow because we will have another opportunity to talk about the importance of this legislation. I do believe, however, that we must move forward to assure full implementation and that until we have experience knowing how this law operates in the field we must not consider amendments.

Senator **Randolph**. We will have just a little change of order. We will begin with Daniel Yohalem, if he will come to the witness stand. Will you tell us about the organization you represent, for the record.

Mr. **Yohalem**. Yes, sir.

Senator **Randolph**. Thank you.

STATEMENT OF DANIEL YOHALEM, ATTORNEY AT LAW, REPRESENTING CHILDREN'S DEFENSE FUND

Mr. **Yohalem**. Mr. Chairman, thank you for inviting me here to testify today in regard to Public Law 94–142, the Education For All Handicapped Children Act.

Senator **Randolph**. Will you place the mike closer to you? We want our guests and the others here who are interested in following closely the hearing to have that opportunity. Thank you.

Mr. **Yohalem**. I would like to summarize the written testimony I have prepared and request that this written testimony be included by this committee in the record.

Senator **Randolph**. We will include all of your statement as if read; and you and the other witnesses can help us by summarizing your statements. We may be able to meet for only 2 hours this morning. That is the general Senate Rule now. Sometimes by unanimous consent, it is waived, but we do not know at this time whether or not it will be waived.

Mr. **Yohalem**. I am testifying on behalf of the Children's Defense Fund, a national nonprofit, public interest child advocacy organization, created in 1973, to address systematically the conditions and needs of children in this country. CDF has gathered evidence and issued reports on specific problems faced by large numbers of children, including our 1974 nationwide study, "Children Out of School in America," documenting the ways in which handicapped and other children are systematically denied an education by the Nation's public schools.

CDF seeks to correct problems uncovered by our research through the monitoring of Federal and State administrative policies and procedures, throught litigation, dissemination of public information, and the provision of legal and technical support to parents and local community groups representing children's interests.

The Children's Defense Fund congratulates this committee, and in particular Senator Randolph, for authoring and guiding to enactment this landmark legislation. Public Law 94–142 represents Congress', indeed the country's, best judgment about the essential rights needed to combat centuries of exclusion of handicapped children from the Nation's schools. It also represents a new and generous Federal role in financing educational services for handicapped children, thus helping the States meet their constitutional and statutory obligations. In short, this law represents the greatest hope for educating this country's handicapped children.

As the attorney responsible for the Children's Defense Fund's special education activities I want to inform this committee that the handicapped children we represent throughout this country are counting on full and forceful implementation of Public Law 94–142 when it goes into effect this fall. We have provided parents throughout the United States with written materials explaining their children's rights under Public Law 94–142, and have advised lawyers as to the act's various legal mandates. We are also representing in litigation handicapped children who are still, even in 1977, either totally excluded from school or isolated from normal life in unnecessarily segregated programs. Public Law 94–142 and its predecessor, Public Law 93–380, are the mainstays of virtually all our efforts to insure educational opportunities for handicapped children in the large number of States in which we work.

We are aware that the committee has been presented with a number of proposed amendments to Public Law 94–142. In particular, we have reviewed a packet of amendments proposed by the Education Commission of the States and a number of other organizations representing State officials. We think that it is entirely premature at this time, a number of months before the act has even gone into effect, to be discussing major changes in the law. In our view there is nothing in Public Law 94–142 that cannot be implemented expeditiously. Its provisions build upon constitutional requirements that have been known to the States for some time and have been incorporated in many States' laws.

The problems we see in implementing Public Law 94–142 do not stem from the propriety of the act's requirements. They stem from an old-fashioned resistance to change by a very small number of States and school districts. They stem from a lingering unwillingness to recognize that handicapped children have a right to education and to sufficient State and local financial support for this education. They stem from some local school officials' resistance to the inclusion of parents in the decisionmaking process. And they stem from conflicting signals from the Department of Health, Education, and Welfare about what constitutes compliance with the Act. Nonetheless, while there is great diversity in the stages of implementation in the various States, a great many States are moving to comply with Public Law 94–142 and its September 1978 deadline for provision of full appropriate services.

Therefore, it is our view that the resolution of implementation problems depends not upon amendments to Public Law 94–142, but upon the development of an effective Federal enforcement program that includes strong and clear regulations, systematic monitoring of State practices, onsite compliance reviews, and workable procedures to bring noncomplying States into compliance. I want to emphasize the importance of effective regulations in this scheme. They are the essential mechanism for establishing standards for day-to-day implementation of Public Law 94–142, and for putting all State and local education agencies on notice of what is expected of them under the act.

Thus, it is our hope that the Bureau of Education for the Handicapped, which is now in the process of developing regulations implementing Public Law 94–142, will issue and promptly enforce clear and complete regulations to carry out the intent of Congress. Regulations and an enforcement program—in our view—not amendments are the key to resolving implementation problems at this time.

I would like to briefly touch upon a number of implementation problems to explain how they can be resolved by regulation instead of amendment. Each of these problems is treated in greater detail in my written testimony.

First, it has been our experience, both in the past under Public Law 93–380 and today as States begin the Public Law 94–142 process, that very few states afford adequate opportunities for concerned persons to participate in the development of State and local implementation plans, as required by sections 612 and 613 of the act. For example, in some States public notices about State plans have been published only once in tiny print in the legal column of a newspaper. Only a single copy of the plan has been made available for review in one office in the State's capital. The draft plans have been made public for the first time on the day of the public hearing. Hearings have been held in inaccessible parts of the State. Comments were ignored when received.

Public Law 94–142 does not have to be amended to deal with these problems, however. Regulations issued by BEH can and must require public notices that set forth the time table for development of State wide-spread access to State plans well in advance of hearings; effective plans; hearings held in a variety of accessible locations throughout the State; and the incorporation in the final State plan of a discussion of the comments and the reasons for rejecting any suggested changes in the plan. These requirements would go a long way toward remedying the problem.

Second, for years handicapped children throughout this country have been bounced from State agency to agency, with each agency claiming the other has responsibility for providing services. Obviously, the result has been that many children are denied all services, and their parents are worn down running from the State Department of Mental Health, to vocational rehabilitation, to education, to public welfare, to health, etc.

Public Law 94–142 resolves this very serious problem by rightly placing responsibility and accountability with the State educational agency, the agency receiving funds under the act. No amendments are needed to insure implementation of this important provision. But the regulations issued by BEH must require specific mechanisms, including interagency cooperation agreements and sanctions against local school districts by which the State educational agencies can ensure full services for each child, regardless of the type of service needed. Contrary to the assertions of the Education Commission of the States, et al., the vast majority of State education agencies presently have the power to fulfill the Act's mandate. For the rest, that power can be established by State executive or legislative action.

Third, despite the clear mandate of Public Law 94–142 and its predecessor, Public Law 93–380, poor and minority children are still being overclassified "mentally retarded" as a result of discriminatory evaluation procedures. For example, we learned through discovery in one case we are litigating that black children throughout the State of Mississippi are classified mentally retarded at a rate more than three times that for white children. In addition, most evaluations there do not lead to educational plans, but merely label a child as handicapped. Nondiscriminatory evaluation procedures are clearly constitutionally mandated, and IEPs are an inseparable part of both the evaluation and free appropriate education program requirements of Public Law 94–142. An evaluation that does not result in an individualized educational plan can only lead to the classification of a child, and this Committee has already heard in the hearings prior to the passage of Public Law 94–142 about the evils of such labeling. The IEP is also the only mechanism for determining which educational program is appropriate for each child. Parental, administrative, and, if necessary, judicial determinations of appropriateness are impossible unless each child's individual program is specified in writing.

It is therefore essential that BEH's regulations implementing Public Law 94–142 effectively prohibit discriminatory evaluations by requiring that evaluations include information about a child's ability in the class, at home, and in the community; medical screening; extensive parent participation, and only those standardized tests that have been properly validated. This is the only type of evaluation that is accepted as non-discriminatory by the professional SAED community. See, e.g., Jane Mercer, "Labeling the Mentally Retarded," University of California Press, 1973. BEH should also provide guidance to the States on preparation of IEP's. A clear statement of the types of program information required by IEP's will eliminate any possible confusion about their purpose and over-estimates of their costs.

The Education Commission of the States, et al., proposes that Public Law 94–142 be amended to state that IEP is not a contract for services. They justify this by asserting that without such an amendment, school districts will be far more concerned with protecting themselves from liability than with providing appropriate educational services. Supposedly, districts will "cover" themselves by preparing inadequate IEP's. This argument is absurd. First, most school districts will act in good faith. Second, the act provides for extensive procedural safeguards under which parents can challenge an inadequate IEP.

But most importantly, the Education Commission of the States attack on the IEP is really an attack on the act itself. The whole point of Public Law 94–142 is to make the provision of appropriate educational services to each handicapped child a binding requirement. The IEP simply describes for each child the educational services the school district determines to be appropriate. It necessarily follows that if a child has the right to appropriate educational services, the document describing those services, the IEP, must be binding. Any other result would render the act meaningless and unenforceable. Thus, the proposed amendment is entirely ill advised.

Fourth, many of the States in which we are working do not yet have such procedural safeguards in place despite the fact that they have been required by Public Law 93–380 since 1974, and are essential to protect children from arbitrary and inappropriate decisions by school districts. A number of other States that do have procedures utilize officials and employees of the agency whose action is being challenged as both hearing officers and surrogates, thereby infusing the safeguards with a serious conflict of interest. In addition, many States have failed to set up procedures which are timely, and which provide adequate notice to parents of their rights. All these problems can and must be remedied by issuance of regulations to clarify the Act's strong mandate in each of these areas. Once regulations specify the criteria for impartiality, timetables for procedures, and the minimum content of parental notices, BEH must then vigorously enforce these regulations to insure that procedural safeguards are available in every State.

The Education Commission of the States, et al., proposes several amendments that will weaken the Act's strong procedural safeguards. Each is entirely inappropriate and should be rejected. One proposed amendment broadens the pool of persons who would be eligible to be surrogate parents by including anyone not directly providing services to a child. This would include, for example, a principal from a neighboring school; a teacher within the school, et cetera. Since it would be a clear conflict of interest for any of these school district employees to be representing children in proceedings challenging the actions of their employer, this proposal undermines the one safeguard intended especially to protect parentless children.

Another proposed amendment removes the Act's requirement that State departments of education provide administrative appeals from hearings conducted on the local level. This is justified as necessary to comport with a number of States' laws and practices which do not presently provide for such appeals. But these appeals are not costly to set up, and no State, to my knowledge, prohibits the creation of such an appeal under these circumstances. Further, these appeals are an important safeguard in the administrative process. Most parents will not be able to afford a lawyer to go to court. Therefore, they must be afforded a viable administrative appeal to the State educational agency, which has the authority and expertise to resolve disputes with the school districts. In addition, an administrative appeal will greatly reduce the need for judicial action under the Act. Experience with other Government programs has shown that when there is an opportunity for an administrative appeal, the overwhelming majority of disputes are resolved at the administrative, rather than the judicial level.

Fifth, a proposed amendment deletes entirely section 615(e), which provides that decisions of hearing officers must be binding on all parties—subject only to a specified appeal—and creates a judicial right of action for aggrieved parties. This sweeping deletion of two of the Act's most important safeguards is proposed without any justification at all. Indeed, since both provisions are the essential checks on the Public Law 94–142 placement process and are mandated by the due process clause of the U.S. Constitution as well, there cannot be any justification for their deletion.

There are two other proposed amendments which I would also like to mention briefly. One of these proposes to delete all of the sections of the act relating to fiscal safeguards, i.e., the sections (a) prohibiting commingling of Federal funds with State and local funds; (b) prohibiting the use of Federal funds to supplant, instead of supplement, State and local funds presently supporting special educational services; (c) requiring Federal funds to be expended only on those costs of educating handicapped children that are in excess of the costs of regular education; and (d) requiring that special education services be at least comparable in quality to regular programs. These are very important measures to protect the fiscal integrity of this act. The Education Commission of the States proposes to delete all these protections, but offers no justification. Because of the great importance of these provisions, this amendment should be rejected, and BEH should be required to issue clear regulations, setting forth the bookkeeping and reporting requirements necessary to assure fiscal accountability.

The other proposed amendment purports to address problems with the "Child Count" that surfaced this year when a substantially fewer number of children were counted than had been anticipated. The Education Commission of the States proposes to remedy this problem by amending the Act to include a duplicated count: that is, a count of the number of services received by each child as opposed to a count of the number of children receiving any services at all. We oppose such an amendment to the Act because we think this would lead to excessive labeling, and because we think that such an approach is not a realistic approach to the way in which educational services are provided. Generally, particular services address a number of special needs for each child. Further, the Federal funds saved on the less expensive services can be applied to the more expensive ones under the present approach. To remedy this year's short Child Count and increase the number of dollars which each State receives, simply by attaching more labels to each child, would be a very inappropriate way of dealing with this problem. We think that it is more appropriate that the act be strictly enforced, that the States conduct a more complete search for presently unserved children, and that they begin to serve them. That is the best way to increase the number of children to be counted for each State's funds under the act.

In closing I would like to thank the Subcommittee for granting me this opportunity to present the Children's Defense Fund's views on problems of implementing Public Law 94-142, and again would like to compliment this subcommittee and in particular Senator Randolph, Senator Stafford, and Senator Williams for the excellent job they did in authoring this legislation and in guiding it to its enactment. It is one of the most important pieces of legislation in the educational field in this country today.

Thank you.

Senator STAFFORD. Thank you very much, Mr. Yohalem for your testimony before this subcommittee. We appreciate your presence here; and your testimony will be very helpful to the subcommittee, I can assure you.

The chairman may have commented on this, but as usual both he and I find ourselves with three different committees meeting this morning simultaneously. So, we are stretched a little bit thin in trying to carry out our duties. But you can see that we have both settled on this subcommittee as the one where we will put the bulk of our time and effort.

While you were testifying I did my best to get through the written testimony that I missed before I got here. For the chairman and myself, one question. Would you give us an example of an administrative change in the Federal education standards which caused a major problem for the States. If you care to answer that in writing, rather than now we will be glad to have you do it that way.

Mr. YOHALEM. I would want to reflect on that, Senator Stafford. Not being an employee of a State government, it is a little difficult for me to know the answer to your question. Our perceptions—as I indicated in my testimony—are that the States are able to implement Public Law 94-142 in its present form, and that, in fact, a great number of them are already in the process of doing so. I do not see any insurmountable obstacle to the implementation of this act.

Senator STAFFORD. If any further response to that question occurs to you within the next few days, if you would respond to it in writing for the record, we would appreciate it.

Mr. YOHALEM. I certainly will. Thank you very much, Senator.

Senator STAFFORD. There may be other questions that we will give you in writing, that we would ask you to respond to for the record.

Mr. YOHALEM. I will be glad to.

Senator STAFFORD. Thank you very much.

Mr. YOHALEM. Thank you, sir.

[The prepared statement of Mr. Yohalem and his responses to additional questions by Senator Randolph follow:]

TESTIMONY OF DANIEL YOHALEM
OF THE CHILDREN'S DEFENSE FUND
BEFORE THE
SENATE SUBCOMMITTEE ON THE HANDICAPPED
OF THE COMMITTEE ON HUMAN RESOURCES

June 21, 1977

Mr. Chairman and Members of this distinguished Committee:

Thank you for inviting me here to testify today in regard to P.L. 94-142, the Education for All Handicapped Children Act.

I am testifying on behalf of the Children's Defense Fund, a national, nonprofit, public interest child advocacy organization created in 1973 to address systematically the conditions and needs of children in this country. CDF has gathered evidence and issued reports on specific problems faced by large numbers of these children, including the 1974 nation-wide study: Children Out of School in America, documenting the ways in which handicapped and other children are systematically denied an education by the nation's public schools. CDF seeks to correct problems uncovered by our research through the monitoring of federal and state administrative policies and practices, litigation, the dissemination of public information, and the provision of legal and technical support to parents and local community groups representing children's interests.

As the attorney responsible for the Children's Defense Fund's special education activities, I want to inform this Committee that the handicapped children we represent throughout this country are counting on full and forceful implementation of P.L. 94-142 when it goes into effect this Fall. This comprehensive Act sets forth the fundamental rights necessary to insure that all handicapped children receive the free appropriate public education to which they are entitled. As you are very well aware, P.L. 94-142 was not hastily enacted, nor is it a passing experiment in new social theories. This law was passed only after years of public hearings, debate, consultation and investigation. It represents Congress', indeed the country's, best judgment about the essential rights needed to combat centuries of exclusion of handicapped children from the nation's schools. As is clear from the legislative history, it also represents Congress' statement of what the United States Constitution requires for handicapped children. And, lastly, it represents a new and generous federal role in financing educational services for handicapped children, thus helping the states meet their constitutional obligations.

The Children's Defense Fund applauds P.L. 94-142 and sees it as the greatest hope for educating this country's handicapped children. We have provided parents throughout the United States with written materials explaining their children's rights under P.L. 94-142 and have advised lawyers as to the Act's various legal mandates. We are also representing in litigation handicapped children who are still, even in 1977, either totally excluded from school or isolated from normal life in unnecessary segregated programs. P.L. 94-142 and its predecessor, P.L. 93-380, are the mainstays of virtually all our efforts to insure educational opportunities for handicapped children in the large number of states in which we work.

I am aware that the Committee has been presented with a number of proposed amendments to P.L. 94-142. In particular, I have reviewed a packet of amendments proposed by the Education Commission of the States and a number of other organizations representing state officials. I think that it is entirely premature to be discussing major changes in the Act. In my view, there is nothing in P.L. 94-142 that cannot be implemented expeditiously. Its provisions build upon constitutional requirements that have been known to the states for some time and have been incorporated in many states' laws. Perhaps after P.L. 94-142 has been in effect for a number of years, the various experiences we will have had throughout the country will demonstrate better approaches to serving handicapped children. Improvements could be considered at that time.

But at the present time, the problems I see in implementing P.L. 94-142 do not stem from the propriety of the Act's requirements. They stem from an old-fashioned resistance to change by a small number of states and school districts. They stem from a lingering unwillingness to recognize that handicapped children have a right to education and to sufficient state and local financial support for this education. They stem from some local school officials resistance to the inclusion of parents in the decision-making process. And they stem from conflicting signals from the Department of Health, Education and Welfare about what constitutes compliance with the Act. Nonetheless, while there is great diversity in the stages of implementation in the various states, a great many states are now moving to comply with P.L. 94-142 and its September 1978 deadline for provision of full appropriate services.

Therefore, it is my view that the resolution of implementation problems depends not upon amendments to P.L. 94-142, but upon the development of an effective federal enforcement program that includes strong and clear regulations, systematic monitoring of actual state practices, on-site compliance reviews and workable procedures to bring non-complying states into compliance. I want to emphasize the importance of effective regulations in this scheme. They are the essential mechanism for establishing standards for day-to-day implementation of the P.L. 94-142 requirements and for putting all state and local education agencies on notice of what is expected of them under the Act.

State and local special education officials have repeatedly told me that they would welcome a clear and consistent statement of their obligations under the federal law. Many who are relying on P.L. 94-142 to move their otherwise recalcitrant departments of education have confided in me that their major problems stem from administrative changes in federal standards and from ad hoc waivers granted by federal agencies, and not from the substantive requirements of the Act. They say it was the repeated federal shifts in policy over the past, during development of the Section 504 regulations and enforcement of P.L. 93-380, that has helped to create resistance to the growth of special education programs and protections in the states. These shifts allowed many state and local officials, faced with competing resource demands, to believe that they need not provide full educational services to handicapped children. They doubted the federal government's commitment to these children.

Thus, it is our hope that the Bureau of Education for the Handicapped, which is now in the process of developing regulations implementing P.L. 94-142, will issue and promptly enforce clear and complete regulations to carry out the intent of Congress. Regulations and an enforcement program, not amendments, are the key to resolving implementation problems at this time.

I would like to discuss briefly a few statutory provisions to demonstrate why this is so. I am sure you will be provided further examples by other witnesses of problems that can be resolved by regulation, instead of amendment, during these hearings.

Section 613 requires each state desiring funds under the Act to submit a plan setting forth the manner in which the state will achieve compliance with the Act's provisions. Section 612(f) requires the states to consult with handicapped individuals, parents of handicapped children and other concerned persons; to provide adequate notice and conduct public hearings; and to provide an opportunity for public comment "prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this Section and Section 613."

It has been our experience, both in the past under P.L. 93-380 and today as states begin the P.L. 94-142 process, that very few states afford adequate opportunities for concerned persons to participate in the planning process. For example, in some states public notices about state plans have been published in tiny print in the legal column of the newspaper; only a single copy of the plan has been made available for review in one office in the state capital; the draft plans have been made public for the first time on the day of the public hearing; hearings have been held in inaccessible parts of the state; comments were ignored when received.

P.L. 94-142 does not have to be amended to deal with these problems, however. Regulations issued by BEH can and must facilitate the public's participation in the development of state plans by establishing clear procedures for implementing the Act's public participation requirements. These procedures should include, at a minimum, widespread access to state plans well in advance of hearings, effective public notices that set forth the timetable for development of state plans, hearings held in a variety of accessible locations throughout the state, and the incorporation in the final state plan of a discussion of comments and the reasons for rejecting any suggested changes in the plan. (Similarly, regulations must insure the openness of local school district applications required by Section 614(1)(C).)

Under Section 612(6) "the state educational agency shall be responsible for assuring that the requirements of this part are carried out...." This provision properly lodges responsibility and accountability with a single state agency. For years, handicapped children throughout this country have been bounced from state agency to agency, with each agency claiming that the other has responsibility for providing services. Obviously, the result has been that many children are denied all services and their parents are worn down running from the state department of mental health, to vocational rehabilitation, to education, to public welfare, to health, etc.

P.L. 94-142 resolves this very serious problem and rightly places responsibility with the state agency that receives funds under the Act. No amendments are needed to insure implementation of this important provision. But the regulations issued by BEH must require specific mechanisms, including interagency cooperation agreements and sanctions against local school districts, by which the state educational agencies can insure full services for each child, regardless of the type of service needed. Contrary to the assertions of the Education Commission of the States, et al., the vast majority of state education agencies presently have the power to fulfill the Act's mandate. For the rest, that power can be established by state executive or legislative action.

Section 612(5)(C) requires that children be evaluated by non-discriminatory procedures and Section 614(a)(5) mandates an "individualized education program" (IEP) for each child in need of special education or related services. Nondiscriminatory evaluation procedures are clearly constitutionally mandated, and IEPs are an inseparable part of both the evaluation and free appropriate education program requirements of P.L. 94-142. An evaluation that does not result in an IEP can only lead to the classification of a child, and this Committee has already heard in the hearings held prior to the passage of P.L. 94-142 about the evils of such labeling. The IEP is also the only mechanism for determining which educational program is appropriate for each child. Parental, administrative and, if necessary, judicial determinations of appropriateness are impossible unless each child's individual program is specified in writing.

Despite the clear mandate of P.L. 94-142 and its predecessor P.L. 93-380, poor and minority children are still being overclassified mentally retarded as a result of discriminatory evaluation procedures. For example, I learned through discovery in one case I am litigating that black children throughout the State of Mississippi are classified mentally retarded at a rate more than three times that for white children.

It is therefore essential that BEH's regulations implementing P.L. 94-142 effectively prohibit discriminatory evaluations by requiring that evaluations include: information about a child's abilities in the class, at home and in the community; medical screening; extensive parent participation; and only those standardized tests that have been properly validated.

BEH should also provide guidance to the states on preparation of IEPs. A clear statement of the types of program information required by IEPs will eliminate any possible confusion about their purpose and overestimates of their costs.

The Education Commission of the States, et al., proposes that P.L. 94-142 be amended to state that the IEP is not a contract for services. They justify this by asserting that without such an amendment, school districts will be far more concerned with protecting themselves from liability than with providing appropriate educational services. Supposedly, districts will "cover" themselves by preparing inadequate IEPs. This argument is absurd. First, most school districts will act in good faith. Second, the Act provides for extensive procedural safeguards under which parents can challenge an inadequate IEP.

But most importantly, the Education Commission of the States attack on the IEP is really an attack on the Act itself. The whole point of P.L. 94-142 was to make the provision of appropriate educational services to each handicapped child a binding requirement. The IEP simply describes for each child the educational services the school district determines to be appropriate.

It necessarily follows that if a child has the right to appropriate educational services, the document describing those services, the IEP, must be binding. Any other result would render the Act meaningless and unenforceable. Thus, the proposed amendment is entirely ill-advised.

Section 615 mandates extensive procedural safeguards to protect children from arbitrary and inappropriate decisions by school districts. Many of the states in which we are working do not yet have such procedures in place, despite the fact that they have been required by P.L. 93-380 since 1974. A number of other states that do have procedures utilize officials and employees of the agency whose action is being challenged as hearing officers and surrogates, thereby infusing the safeguards with a serious conflict of interest. In addition, many states have failed to set up procedures which are timely and which provide adequate notice to parents of their rights. All of these problems can and must be remedied by issuance of regulations to clarify the Act's strong mandate in each of these areas. Once regulations specify the criteria for impartiality, timetables for procedures and the minimum content of parental notices, BEH must then vigorously enforce these regulations to insure that procedural safeguards are available in every state.

The Education Commission of the States, et al., proposes several amendments that will weaken the Act's strong procedural safeguards. Each is entirely inappropriate and should be rejected. First, a proposed amendment broadens the pool of persons who would be eligible to be surrogate parents, by including anyone not directly providing services to a child. This would include, for example, a principal from a neighboring school, a teacher within the school, etc. Since it would be a clear conflict of interest for any of these school district employees to be representing children in proceedings challenging the actions of their employer, this proposal undermines the one safeguard intended especially to protect parentless children.

Second, a proposed amendment removes the Act's requirement that state departments of education provide administrative appeals from hearings conducted on the local level. This is justified as necessary to comport with a number of states' laws and practices which do not presently provide for such appeals. But, these appeals are not costly to set up and no state to my knowledge prohibits the creation of such an appeal under these circumstances. Further, these appeals are an important safeguard in the administrative process. Most parents will not be able to afford a lawyer to go to court. They must be afforded a viable administrative appeal to the state educational agency, which has the authority and expertise to resolve disputes with the school districts. Finally, an administrative appeal will greatly reduce the need for judicial action under the Act. Experience with other government programs has shown that, when there is an opportunity for an administrative appeal, the overwhelming majority of disputes are resolved at the administrative, rather than the judicial, level.

Third, a proposed amendment deletes entirely Section 615(e), which provides that decisions of hearing officers must be binding on all parties (subject only to a specified appeal) and creates a judicial right of action for aggrieved parties. This sweeping deletion of two of the Act's most important safeguards is proposed without any justification at all. Indeed, since both provisions are the essential checks on the P.L. 94-142 placement process and are mandated by the due process clause of the United States Constitution as well, there cannot be any justification for their deletion.

The last example of an implementation problem that can be resolved through regulation, rather than amendment, is the series of fiscal safeguards found in Section 613(9) and 614(a)(1) and (2). These Sections prohibit states from co-mingling federal funds with state and local funds, and from using federal funds to supplant (instead of supplement) state and local funds presently supporting special educational services. These provisions also require that P.L. 94-142 funds be expended only on those costs of educating handicapped children that are in excess of the costs of regular education and on special education services that are at least comparable in quality to regular programs not receiving these funds.

Implementation of similar provisions in other educational programs has typically not been effectively monitored or enforced by the federal government. In a number of situations we have investigated, Title I ESEA and P.L. 93-380 funds were being used either for general education purposes or to supplant existing state and local funds or to provide wholly inadequate programs. BEH must issue clear regulations setting forth the bookkeeping and reporting requirements necessary to assure fiscal accountability. Each of these provisions is vitally important to maintain the fiscal integrity of the federal program and target the federal funds on the population protected by the Act. The Education Commission of the States, et al., proposes to delete all of these protections, but offers no justification at all for this extreme position. Because of the great importance of these provisions, this proposed amendment should be rejected.

In closing, I would like to thank the Committee for granting me this opportunity to present the Children's Defense Fund's views on problems of implementing P.L. 94-142.

CHILDREN'S DEFENSE FUND
of The WASHINGTON RESEARCH PROJECT, Inc.
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[illegible]

July 18, 1977

Received
[illegible]
Subcommittee on
The Handicapped

Senator Jennings Randolph
Chairman
Subcommittee on the Handicapped of the
Senate Committee on Human Resources
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

Thank you for your letter of June 30, 1977. The Children's Defense Fund appreciates the opportunity to provide the Subcommittee additional information pertaining to issues raised in the Hearings on the Education of All Handicapped Children Act of 1975, Pub. Law 94-142. We have repeated each of your questions below and followed each question with our answer.

I.

Q. In your testimony you stated that "many who are relying on P.L. 94-142 to move their otherwise recalcitrant departments of education have confided in me that their major problems stem from administrative changes in Federal standards and ad hoc waivers granted by Federal agencies ..." Please provide examples.

A. State administrators were referring to the failure of HEW to issue any regulations under both the Education of the Handicapped Act (EHA), as amended by P.L. 93-380 (the predecessor 1/ to P.L. 94-142), and Section 504 of the Rehabilitation Act of 1973. They have pointed out that HEW has taken an inconsistent stance with respect to the enforcement of these statutes in the absence of regulations. Thus, in certain instances, states were provided funds under P.L. 93-380 when they had large numbers of handicapped children out of school entirely, no statewide child-find program, no due process safeguards, unnecessarily segregated schools and racially disproportionate classes for mentally retarded children. The federal agency's actions toward the State of Mississippi constitute such an example of an ad hoc informal waiver of the law.

1/ HEW finally issued regulations implementing Section 504 on May 4, 1977. A vigorous Section 504 enforcement program, however, has not yet been commenced.

Federal funds have flowed to this state for years despite concrete evidence of each type of violation of federal law set forth above. In addition, HEW has, in effect, granted waivers of the Act's requirements to many other states, by allowing them to receive federal funds in the face of evidence of specific procedural safeguards, integration, or child-find inadequacies. As I indicated in my testimony, this has fueled the hopes of those who want the federal law to go away. But many state and local special education officials would welcome a clear and consistent statement of their obligations under federal law. This will help them tremendously in their own efforts to move their departments of education toward full compliance and full services. Strong federal enforcement of P.L. 94-142 will insure such a statement.

II.

Q. Could you describe for the record the litigation you are currently involved in which affects handicapped children. From your experience in this case can you draw any general conclusions about the need for P.L. 94-142? What kinds of problems will this legislation lay to rest in the States?

A. The major special education case in which we are involved is Mattie T. v. Holladay, C.A. No. DC-75-31-S (N.D.Miss.), filed on April 25, 1975. This class action, against state officials who are responsible for administering Mississippi's special education and Title I programs and against local officials from seven Mississippi school districts, challenges: (a) the denial of special educational services to handicapped children throughout the state who are excluded from school or neglected in regular classes, (b) the provision of inadequate services in isolated "special" classes, (c) the absence of basic due process procedures to challenge identification, evaluation and placement decisions, and (d) the use of racially discriminatory tests and evaluation procedures to certify children eligible for special education classes.

This suit is different from many of the previous "special education" cases in its primary reliance on the following federal statutes as the bases for its legal claims: The Education of the Handicapped Act - Part B, 20 U.S.C. §1411 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; and Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C., §241e et seq.

There is presently pending a comprehensive motion for summary judgment challenging the state defendants' failure to enforce provisions of the Education of the Handicapped Act - Part B that require:

- prior notice and an impartial due process hearing to challenge educational evaluations and placements of children who are handicapped or labeled as handicapped by their schools, 20 U.S.C. §1413(a)(13)(A);

- the location and identification of all handicapped children in the state in need of special education services, 20 U.S.C. §1413(b)(1)(A);
- the use of racially and culturally non-discriminatory tests and procedures to classify and place handicapped children, 20 U.S.C. §1413(a)(13)(C); and
- the education of handicapped children in normal school settings with non-handicapped children to the maximum extent appropriate, 20 U.S.C. §1413(a)(13)(B).

This motion was supported by expert affidavits by Jane R. Mercer on non-discriminatory testing and Milton Budoff on education in the most normal setting possible, by affidavits by parents from a number of counties in Mississippi describing the difficulties they have encountered in trying to get necessary educational services for their children, and by extensive documentation of the state's deficiencies drawn from a year's formal discovery.

In addition, motions for summary judgment are pending against two sets of local school district defendants challenging the exclusion of handicapped children from all educational services in violation of Section 504.

P.L. 94-142 addresses all of the issues raised in this case and establishes clear standards for compliance. It also provides additional federal funds to assist the states to achieve compliance. While the Act's clear requirements and financial assistance will go a long way toward correcting the kinds of problems we have encountered in the states, P.L. 94-142 is not self-enforcing. Thus, HEW must implement a serious and competent enforcement program, if P.L. 94-142 is really to insure that appropriate educational services are provided to all handicapped children in the nation.

III.

Q. Some organizations have recommended that States and local districts be "held harmless" from the provisions in excess of Section 504 until Congress appropriates the full 40% maximum entitlement provided for under the law. What is your view of this recommendation?

A. We think this recommendation is totally without merit. It has dangerous potential as a federal abandonment of crucial educational rights. We agree with Ernest L. Boyer, United States Commissioner of Education and one of the Administration's top officials, who testified before this Subcommittee on July 14, 1977, that:

> We do appreciate the concern of some local and State officials over the costs of providing appropriate special education programs. We do not, however, support the

> position that such programs cannot be offered unless the Federal Government pays a substantial percentage of the costs. We are pleased that the budget and appropriations process has supported the formula now in law -- resulting in approximately $300 million for these purposes in Fiscal Year 1977, and approximately $550 million in Fiscal 1978. Although we favor a Federal role in support of programming for handicapped children, we recognize that 48 out of 50 States already have statutes providing for the education of handicapped children, and court decisions have uniformly found that States must provide education for their handicapped children on an equitable basis. We feel, therefore, that the funding under the Federal statute must be seen as assisting the States with their current responsibilities and not imposing a totally new Federal fiscal or programmatic burden.

P.L. 94-142 simply codifies the basic educational rights of handicapped children, so that such children will not continue to be deprived, as they have been for so long, of a meaningful education. The Act also establishes effective administrative procedures and provides federal financial assistance to facilitate compliance with these rights. In our view it would be disastrous for Congress, in effect, to tell the States that they can continue to deny fundamental educational rights until the Federal Government relieves them of a fiscal responsibility that is rightly theirs.

Further, the States would obtain little, if any, relief from this proposal. The Section 504 regulations recently issued by HEW require most of the protections established by P.L. 94-142. Even P.L. 94-142's individualized education program (IEP) can be seen as an integral part of Section 504's right to a free appropriate education based on an individual evaluation. (Since the IEP simply describes for each child the educational services the school district determines to be appropriate, the IEP is the logical end-product of the evaluation process and the official statement of the educational services appropriate for a child.)

By establishing a workable scheme for insuring compliance with basic educational rights and by providing federal financial help, P.L. 94-142 has become the focal point for all special education efforts. It must be retained in its present form.

IV.

Q. You have mentioned in your testimony that the administrative appeal mechanism and the due process procedures in general provide a clear and viable procedure for redress of grievances for parents. As a lawyer who has been involved with litigation and working with parents, have you come across parents who have settled for an inadequate education for their children because they could not afford to go to court?

A. Many times I have interviewed parents in states without administrative procedures like those in P.L. 94-142 who have had to settle for an inadequate education for their handicapped children. These parents could not afford to go to court, and they had no other mechanism for challenging the inadequacies of their school district's programs. In contrast, parents in Massachusetts, which has an administrative procedure like that mandated by P.L. 94-142, have repeatedly informed me that they have been able to resolve their educational conflicts through the complaint and hearing process, without a lawyer and without going to court. These parents have indicated, however, the importance of three factors in this process. First, they have usually had the assistance of trained lay-advocates (parents or other persons who have been trained to help parents participate effectively in the administrative process). Second, the hearing officers were truly impartial, legally trained and not employees of the local school district whose decision was being challenged. (They were employees of the State Department of Education.) And third, the hearing officers were empowered to order services proposed by parents at the hearings, and were not limited simply to accepting or rejecting the plan of services recommended by the school district. To insure the effectiveness of the P.L. 94-142 administrative process, regulations issued by BEH to implement P.L. 94-142 should require that each of these three factors be incorporated in each state's system of procedural safeguards.

V.

Q. In States where you have worked, what do you see as being the results of the failure to have a single State agency to be finally and generally responsible for assuring the education of handicapped children? Are there other areas where similar arrangements work?

A. Our experiences have shown us that in those States in which no single State agency is responsible for insuring the education of all handicapped children, a great many of these children end up receiving no educational services at all. In an effort to lighten the administrative burden, preserve "turf" and save program costs, the various State agencies in such States sometimes refuse to provide the needed educational service. Instead, they simply refer the children to a different agency for the service.

Thus, parents are forced to shuttle from the State Department of Education, to Mental Health, to Vocational Rehabilitation, to Public Welfare, to Health, desperately trying to get beyond the "I'm sorry it's not our responsibility" attitude.

P.L. 94-142 properly remedies this problem by requiring the state educational agency to be responsible and accountable for implementation of the Act. There are two principal reasons why the Act's choice of the state *educational* agency is particularly appropriate. First, the agency receiving funds under the Act must be the agency made responsible for controlling how those funds are utilized. Second, the educational agency is the only state agency with sufficient expertise to insure the quality of educational services in both the local educational agencies and in the institutional programs.

It is also important to point out that the Administration has just testified that it is not aware of any insurmountable state law conflicts. In each instance of supposed conflict scrutinized by HEW, state administrative solutions have been available. In addition, a number of state officials testifying about the need for change in the federal law on this issue, have admitted under questioning by the Subcommittee that there is no real problem in their own states. *See*, *e.g.*, the testimony of Assistant Secretary Henrick Dullea from New York, Representative Massey from Texas, and State Superintendent of Public Instruction Robert D. Benton from Iowa.

VI.

Q. What do you see to be the problems of parents and advocates being able to fully and forcefully assure the implementation of P.L. 94-142 for their children? What are the steps we need to think about taking to bolster their efforts?

A. We have found the major problem parents face in fully and forcefully implementing P.L. 94-142 is the absence of local advocates to assist them in taking full advantage of the Act's procedural safeguards. Parents need help in challenging school officials' actions that are not in the best interests of their children. Therefore we think the regulations issued to implement P.L. 94-142 should encourage state utilization of federal and state funds for the training of parent advocates and the preparation and dissemination of parents' rights materials. In addition, the regulations should insure access to free independent evaluations and to trained, truly impartial hearing officers. Promulgation of such regulations, not statutory amendment, is necessary to insure an effective parent role in implementing P.L. 94-142. And, to repeat a point made several times earlier in this letter, HEW must carry out a forceful compliance program, itself, to support the efforts of individual parents.

In closing, we want to thank you again for the opportunity to present our views to the Subcommittee. The Children's Defense Fund will gladly amplify any of these answers to your questions or supply additional information should the Subcommittee request it.

Best regards.

Sincerely,

Daniel Yohalem

Daniel Yohalem

Senator STAFFORD. Unlike the chairman and myself, who may have difficulty covering our committee assignments this morning, I note that the O'Neill family is able to cover both the House and the Senate side of the Capital at once. And while Tip O'Neill is presiding over the House, Lt. Gov. Thomas O'Neill of the Commonwealth of Massachusetts is here, and we are honored to have him.

Governor, we invited you to appear as a witness in front of this committee, and we appreciate your being here.

STATEMENT OF HON. THOMAS O'NEILL, III, LIEUTENANT GOVERNOR, COMMONWEALTH OF MASSACHUSETTS, REPRESENTING THE NATIONAL GOVERNORS' CONFERENCE

Mr. O'NEIL. Thank you, Senator, it is good to be here.

Senator RANDOLPH. Governor, you have been introduced by a good man. We work in tandem, there is no minority or majority in our subcommittee, or in the full committee. I just add to what I am sure Senator Stafford has already said, we are gratified that you are with us as a witness to counsel with us; your views will be helpful. If you will proceed.

Mr. O'NEILL. Thank you, Senator Randolph. I want to thank you very much for the opportunity to come before you and your committee, Mr. Chairman. I make mention of the fact, too, that I am representing both the Commonwealth of Massachusetts, Governor Dukokis and his people, and the National Governors' Conference. It is a particular honor since this committee has provided the leadership that brought forward a national commitment to serve handicapped children in the first place.

A little over 2 years ago I testified before your committee on the Education for All Handicapped Children Act, and I respect the committee for its continued interest in the program as it gets under way.

Since the enactment of the program in 1975, a great deal of discussion, planning, and controversy has emerged. They have only highlighted the wisdom of the basic intent and goals of the legislation, goals which seek to reverse the tragic effects of past policies toward handicapped children throughout America. Those policies of neglect, of exclusion, cast a long, dark shadow over the lives of countless people who suffered the consequences of our national unwillingness to bring handicapped children into the mainstream of educational programs—no longer.

The States are pledged to meet the objectives of the law, but goals and objectives alone offer false hope to those who desperately need help. Intent and commitment can only be measured by the resources that are made available to carry out the mandate of the law. Public Law 94-142 contains a glaring contradiction, a contradiction so great it threatens the program itself in some States.

Implementation of the special services that are so necessary will cost a projected $9.4 billion, an increase of nearly $5 billion over current State and local expenditures. Thus far, the Federal commitment of financial resources fails to match its assurances to those who take comfort from the aims and directions of the legislation.

Two years ago I warned of the dangers of inadequate funding.

Today, those warnings were justified for there is a growing opposition developing among States, opposition not to serving handicapped children, but to mandates without resources, to promises without followthrough, and to lofty rhetoric without real commitment.

In my home State of Massachusetts, we have learned a bitter lesson, one level of government cannot mandate programs and their costs on other jurisdictions during troubled fiscal times. In 1972, our State passed a comprehensive special education program with a 2-year period for preparation and implementation. Since that time expenditures for special education have increased from $90 million in 1973 to $230 million in fiscal 1977. The State share has increased from $31 million to $90 million. State aid for special education once represented only 5 percent of total local aid. It now comprises 20 percent of State aid to our local municipalities.

While the amount of State assistance for special education has increased dramatically, the additional cost borne by the local property tax has become so severe as to undermine support for the program in Massachusetts.

A national special education program will require commitments of funding from Federal, State, and local sources. The program cannot be supported if a disproportionate share of the cost is borne by one level of government.

Early signs suggest that our experience in Massachusetts will be repeated in other States. Under the current formula and authorization levels, States will lack the necessary funding to carry out the Federal mandate. The cost of implementing Public Law 94–142 has been estimated at over $9 billion. Yet, the statute authorized only $400 million for fiscal 1978, or 4.3 percent of the actual cost of the program.

First-year funding equals only one-thirtieth of the State and local spending for special education in my State. Advocates of the program in Massachusetts, myself included, have pointed expectantly to the Federal law to help us hold the line on increased property taxes. Critics, however, say that the $70 or $75 per child in Federal reimbursements is inadequate. Thirty other States already spend 15 to 20 times the Federal contribution for special education. States have complained that initial start-up costs warrant a much larger per pupil allocation in the beginning, rather than the end of the implementation phases.

It is important at this juncture to recall a key point made during Senate consideration of the conference report. The conference committee drastically reduced the authorization levels included in both the House and Senate versions of the program. The reductions were attributed to "the realities of the times," the poor condition of the economy and Federal budget restraints. Mr. Chairman, the fiscal constraints confronting State and local budgets were not kept in mind when the conference committee adopted its authorization levels. Several States have seriously considered not participating in this program because of the limited funding available and additional requirements under the law. That, Mr. Chairman, would be a tragic turn of events.

In view of the strong desire among the States to provide a quality education to handicapped children, the National Governors' Conference makes the following recommendations.

First, the vagaries of the appropriation process give States grave concern. Federal, State, and local budget cycles do not run concurrently. Local school systems, which finance most of the costs, need greater assurance that Federal funds will be appropriated once their budgets are established. The States recommend that the Education for all Handicapped Children Act be funded as an entitlement, thereby guaranteeing reimbursement for all students enrolled in special education programs in the States.

Second, the formula for determining State entitlement fails to reflect the full cost of providing individual services as required by the act, particularly in States with above average per pupil expenditures.

While the national average per pupil expenditure in school year 1975–76 was $1,390, the average in my State was $1,561, and the average cost of providing a free, appropriate special education in my State is $2,700.

These costs reflect the cost-of-living differences among the regions. Geographic differences are receiving increasing attention in the formulation of Federal programs, and I feel they should be reflected in the handicapped education programs. When you consider the cost of education in Massachusetts, and the additional cost of educating a handicapped child, the Federal Government's contribution of just $70 in fiscal 1978 makes but a small dent in the cost of individualized special education services.

To correct these deficiencies, Massachusetts recommends that State-by-State per pupil expenditures be substituted for the national average expenditures. In addition, the reimbursement percentage should be increased to 40 percent in fiscal 1978 instead of the gradual increase over a 5-year period.

And third, the current child count is not sufficient to allocate the maximum authorization. State education agencies contend the child count is underestimated by some 400,000 children. There are many reasons for the undercounting, not the least of which results from the transition and confusion about the requirements of the law. But more importantly, the law only counts children receiving services on 2 given days during the school year, 1 day in February, and 1 day in October. Since some special education services need not be received each school day, it would be more appropriate to count children receiving at least one service during the full week of the months specified.

The law allows States to count no more than 12 percent of their school-age population between 5 and 17. I agree that a ceiling needs to be established to prevent overcounting. While the law mandates services to children 3 to 18 by September, 1978, and ages 3 to 21 by 1980, it prohibits States from fully counting children being served. The Massachusetts count already exceeds our ceiling. State ceilings should be based on a percentage of the age range States are in fact required to serve.

Fourth, States have expressed concern over areas of the Federal law that conflict with their own laws and their own constitution. Again, Public Law 94–142 requires that States assign responsibility for "general supervision" of all services provided under the Act in their State education agency. The intent is to focus accountability in one central location and to improve coordination among service providers. Several States have cited constitutional prohibitions against such a requirement. New Hampshire, Colorado, Wyoming, and Louisiana have limited authority over the operations of local school districts and therefore will have difficulty complying with this provision.

I do believe there is a need for the designation of a single agency to ensure accountability and effective coordination. The National Governors' Conference suggests that States be allowed to comply with the general supervision requirements by enacting legislation which does the following: Establish common standards for special education programs and related services regardless of which agency provides them; sets out a process for cooordinating service providers; and finally, invest an agency with the authority to resolve interagency disputes.

Fifth, States have complained that the due process provisions conflict with current practice in several States. Florida, Nebraska and Rhode Island, for example, do not provide for an administrative review of local hearings. Some States contend that State and local agencies have a biased interest in any appeal, and therefore, the courts are the logical entry point. My primary concern is that appeals, no matter where they are filed, be decided on a timely basis. Any process which takes more than a year to complete, in my mind, is unacceptable from the child's viewpoint. Direct appeals to the court may take as long as 2 years to resolve. Therefore, the Federal Government should emphasize timely disposition of appeals, rather than the process for hearing the appeals.

Finally, Mr. Chairman, there are three additional issues that concern State officials in Massachusetts. First, the regulations require that each child's educational plan be developed or revised at the beginning of the school year. This certainly makes sense for those children who are not yet receiving special education services.

However, it need not be mandated for children already included in a special education program. To establish and review plans for all children at the beginning of the year will overburden the administration of the program. I suggest that schools be allowed to conduct annual reviews on on-going plans. Review of on-going plans might be reviewed at the beginning of the year where it is appropriate, but the schools must have the flexibility to manage heavy demands on their staff at the beginning of school at the same time.

Second, the Massachusetts program has taken great strides to eliminate labeling children by category of disability. Children in special education programs are considered children with special needs. The proposed regulations require that States report the number of children receiving services by disability category. States should be allowed to develop alternative reporting systems such as program prototypes of a service-based calculation that will avoid unnecessary stereotyping of children.

Finally, children receiving service frequently have multiple entitlements under various Federal laws and private insurance policies. A section needs to be added to the regulations that does not remove prior insurers of their responsibility to pay for services covered under their policies. Schools must have access to third-party coverage and should not be forced to bear the costs of medicaid, private insurance, or other entitlements.

Mr. Chairman, I think the Act clearly recognizes the need to provide an effective education for our handicapped children. The objectives of the law can only be achieved if the Federal, the State, and the local governments form a mutual partnership to carry out the mandate of the law. The greatest obstacle to this partnership is money. Massachusetts is searching for ways to continue the level of special education services that are now being offered. We will need help, the help of the Federal Government, if we are to be successful.

So, for the National Governor's Conference, the Governor of the State of Massachusetts, and myself I want to thank you very much for this opportunity.

Senator RANDOLPH. Thank you very much.

On page 4 of your statement you stated that "The cost of implementing Public Law 94-142 has been estimated at over $9 billion." I am sure that Senator Stafford and I would desire, if you can provide it, the source for that estimate you included in your statement.

Mr. O'NEILL. I will tell you that I would like to submit that in writing.

Senator RANDOLPH. Pardon?

Mr. O'NEILL. To give it full credibility, I would like to submit the factual data later in writing, if that is at all possible.

Senator RANDOLPH. That would be agreeable. We just feel that would help the record.

Mr. O'NEILL. I believe—off the top of my head, and I am talking strictly off the top of my head—those figures come specifically from the National Governors' Conference and some staff work that has been done on the issue. So, if you would allow me to submit that in writing, I would appreciate it.

Senator RANDOLPH. You will provide to the subcommittee the source of the estimate you included in your statement.

Mr. O'NEILL. Yes, sir.

Senator RANDOLPH. Now, when you talk about the child count, what are your recommendations? You referred to it.

Mr. O'NEILL. Yes, I did. First of all, as I mentioned, the child count is taken on two different dates in the school year, February 1 and October 1. We support counting children who received any service during a given week because within the system employed in Massachusetts and other States throughout the country some children receive more than one service, and that, honestly, is not being picked up by the counting service today.

So, what we would like to do is have the process include an entire school week, so that all service could be picked up on a per pupil basis.

Senator RANDOLPH. Well, that is what I wanted from you or your organization, a recommendation to us in reference to child count; that is very helpful.

I think it might be helpful, Senator Stafford, if we tell our guests that you had three subcommittee meetings this morning.

Senator STAFFORD. I mentioned that for both of us, Mr. Chairman.

Senator RANDOLPH. Good, it did apply to both of us. I did want to note the absence of the Chairman of our Human Resources Committee. He planned, if possible, to be here today. He is handling Mine Health and Safety legislation, that started yesterday and is continuing today. So, he necessarily has to be in the Senate himself.

I asked unanimous consent at the beginning of the hearing to insert a statement by the Chairman of our committee. He is intensely interested in this subject matter. There will also be questions that he will provide.

Senator Stafford?

Senator STAFFORD. I have no questions, Mr. Chairman. I want to express our appreciation for your coming down here, Governor; it is a pleasure to welcome you here as a fellow New Englander. I might add that the ranking minority member, Senator Javits, is on the floor as the minority manager of the Mine Safety and Health bill. In fact, he asked me if I would come over and relieve him from 9:30 until 11, and I said I could not do it.

Senator RANDOLPH. Thank you very much, Governor. We do know of your interest personally as well as officially, for the Governors' Conference. I hope you will work with us and counsel us. This is a very complex, difficult subject, and a very important, vital subject. We appreciate the interest and the attendance here today. We welcome it because it is truly indicative of the growing understanding of what the subcommittee is addressing in matters such as we have before us today.

Thank you very much.

Mr. O'NEILL. Could I, Mr. Chairman because I have heard the question as it was given to me, could I just expand a little bit on the child count, as you asked the question?

I made mention in the testimony—if I could take the time out. Can I do that?

Senator RANDOLPH. Go ahead.

Mr. O'NEILL. I made mention in my testimony that we have underestimated the amount of children being serviced by the program by some 400,000. I made mention of the fact that they are being underserviced for various reasons. We think, specifically, they have been undercounted by some 400,000 nationwide because of the fiscal limitations that are built into the appropriations and authorizations process here in the Congress. I think that we ought not be dictating to those people that are servicing because of some fiscal constraint.

The other side is that there are some States which have had special education programs—Massachusetts, specifically—which have been servicing age categories of children within the age category of 3 to 21. That 12 percent limitation of children to be serviced really does not expand the 5 to 17 age bracket. We think that if you can incorporate, or expand the ages incorporated in the State program, the service, a regional variation; particulary a State servicing a larger part of a student body specifically, we could help our State in one sense and our local communities with property taxation burdens that they are being forced to bear at this point.

Senator RANDOLPH. Yes, that certainly will be considered. While we are still discussing the matter of ages, what is your comment about starting at the age of 3?

Mr. O'NEILL. It works very effectively, I think it is obviously needed. Parenthetically I will add, as an aside, we have in Massachusetts what we consider to be one of the finest systems of higher education in the entire country, both public and private. The University of Massachusetts has just unveiled a program to investigate the concept that the most formative years both for handicapped and nonhandicapped children, are really the first 4 years of the educational process.

I think to include, or incorporate that age category into this education of all the handicapped legislation is certainly imperative to the overall success. I think it has worked very well in Massachusetts. The only thing that has not worked well is that beyond the mandate we have not gotten the finances to support the mandate. That is why we are here, we need your help.

I might add, too, that I made mention that the average cost of educating on a per pupil basis in Massachusetts is some $1,560; in the city of Boston it is $2,800; in the city of Cambridge it is $2,700. In the core metropolitan areas of our State, statewide, it is in excess of some $2,200 on a per pupil basis, city after city. To feed into this the education of the handicapped children deserves increased spending on a pupil basis of some $1,100. We just cannot expect the local municipalities to bear the full burden of cost; the States cannot afford it, given the fiscal conditions of the last 7½ years in the industrialized Northeast section of our country. So, we have nowhere else to turn but to Washington, asking for financial help.

Senator RANDOLPH. I think our studies have shown that what the Governor is saying is correct.

Just a comment—you mentioned public and private education. I, of course, support public education. However, a matter of grave concern to me is the financial problem faced by our private institutions of higher education. To what extent are these problems exacerbated by the constant increase in community colleges and other programs? This country has a great history of the contribution of private education and I do not want to see the private institutions of higher education placed in a situation where they are at such a disadvantage—as in your State and other States—that their doors close.

Will you comment on this?

Mr. O'NEILL. Well, I did not want to go into such a tangent that we lose sight of the issue at hand here, but I would like to talk to you about it.

Senator RANDOLPH. I am not losing sight of it.

Mr. O'NEILL. I would like to go into it. I do not think that our schools of higher education really begin to project the needs of the future of America, and I think we in Massachusetts understand that, too; it is not just community colleges.

Senator RANDOLPH. Many of the programs were started by private institutions.

Mr. O'NEILL. Yes, I understand that, it is not just community colleges or State public-supported colleges, it is vocational schools, technology schools; and it is the private schools of higher education, too. We have because of the great population drop seen substantial population drops within our higher educational communities. Boston University, a private school of higher education has dropped in enrollment from some 22,000 to some 17,000 in the last 2 years. We project it will drop to some 10,000 pupils in enrollment by 1981. There are two reasons for that, not only population drop in our section of the country within a certain age category—because it just does not demonstrate the projected needs of the future of the United States. We are just now understanding what the vocational needs and the technology needs in Massachusetts, in our section of the country will be. We are trying to formulate educational programs so that we can address those needs and get students into them. They can go hand in glove into the educational and economic projections of the future so there will be a job when someone graduates.

I agree, I think we provided too much lipservice at this point in time. I think we ought to be getting to devise educational programing to begin to look at the future needs not only of our State, but obviously the country as a whole. That is as capsulized a version of the issue at hand that was ever given, and it really deserves a very long conversation and discussion. I think you are absolutely right.

Senator RANDOLPH. Do you have any questions?

Senator STAFFORD. No, I have no questions or comments at this time.

Senator RANDOLPH. We thank you very much.

Mr. O'NEILL. I thank you very much, Mr. Chairman, for the opportunity to be here.

Senator RANDOLPH. As Senator Stafford said, your comments and counsel will be very helpful.

Mr. O'NEILL. Yes, sir. I will be happy to supply the information from the National Governors' Conference. Thank you very much.

[Governor O'Neill's response for the record follows:]

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

THOMAS P. O'NEILL III
LIEUTENANT GOVERNOR

1977 AUG -8 PM 4:06

July 28, 1977

The Honorable Jennings Randolph
U.S. Senator
Chairman, Subcommittee on the
Handicapped
Committee on Human Resources
Room 108 Russell Senate Office
Building
Washington, D.C. 20510

Received
Date 8/11/77
Subcommittee on
The Handicapped

Dear Senator Randolph:

In response to your request, the following is the source of my estimate of $9 billion for implementing P.L. 94-142:

The National Conference of State Legislatures examined the state plan amendments submitted by the states to the U.S. Bureau of Education of the Handicapped for fiscal year 1976 and found that the states had estimated that special education expenditures required to provide full service for handicapped children ages 6-21 would be an estimated $9.3 billion. This compared to reported special education expenditures of $4.8 billion in fiscal year 1975. The original source of this information, then, was the states themselves, as they reported estimates to the federal government. State-by-state estimates may be found in Table I-27 in the report by William H. Wilkin, et. al.; State Aid for Special Education: Who Benefits?, prepared under sponsorship of the National Foundation for the Improvement of Education, with the support of NCSL and through funding from the National Institute of Education, May 31, 1976.

On March 29, 1977, the Education Commission of the States prepared an estimate that, if all handicapped children age 6-17 unserved in 1976-77 were to be served by September 1, 1978, expenditures of $3.24 billion in addition to current state and local expenditures (1976 expenditures of $5 billion to $6 billion) would be required. Total special education expenditures would be approximately $9 billion. This estimate was obtained by estimating the number of unserved handicapped children in 1977 (using the actual 1976-77 child counts compared to 8.7 percent of the population age 6 to 17) and multiplying this figure by $1500, the estimated national average per pupil expenditure for 1977 (assuming as in P.L. 94-142 that excess costs for special education are on the average equal to the cost of basic education).

Therefore, the figure of $9 billion in my testimony appeared to be a reasonable estimate of special education expenditures required to meet the full service requirements of P.L. 94-142.

I wish to commend you for your effort, as Chairman of the Senate Subcommittee on the Handicapped, to identify the problems confronted by the states in implementing P.L. 94-142. I hope that the information in this letter responds adequately to your request.

Sincerely,

Tom O'Neill
THOMAS P. O'NEILL III
Lieutenant Governor

TPO: LACMc

Senator RANDOLPH. Mr. Weintraub?

Mr. Weintraub, we ask you and your associate to bear with us in the interest of time, to include detailed material for the written record, and to highlight your statement.

STATEMENT OF FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR, GOVERNMENTAL RELATIONS, COUNCIL FOR EXCEPTIONAL CHILDREN, ACCOMPANIED BY DR. ALLEN ABSON, ASSOCIATE DIRECTOR FOR STATE AND LOCAL GOVERNMENTAL RELATIONS

Mr. WEINTRAUB. Thank you, Mr. Chairman.

I am Fred Weintraub, assistant executive director for the Council for Exceptional Children. Accompanying me today is Dr. Allen Abson, who is associate director for State and local governmental relations at the Council for Exceptional Children and has over the past 11 years been our primary expert, and perhaps one of the Nation's leading experts on State governmental matters pertaining to handicapped children, particularly as it relates to litigation and State legislation.

We would like to thank you, Senator Randolph and Senator Stafford, for the work you have done over the past 5 years in bringing about Public Law 94–142, and for your continuing interest and support in making this law reality for our Nation's handicapped children.

I would like to submit our statement for the record and attempt to briefly summarize some of the major issues before us.

Because Public Law 94–142 addresses the real instructional needs of children rather than systems-oriented factors, the act certainly has generated its fair share of detractors. But we at the Council for Exceptional Children would contend the number of such detractors are far outweighed by the number of both organizations and individuals in this country who not only are staunch supporters of both the mission and the consequent mechanisms of Public Law 94–142, but are also determined guardians against crippling amendments.

We believe, Mr. Chairman, that on balance these hearings will amply demonstrate that broad and solid base of continuing endorsement.

Who are the detractors? It has been our recurring observation that they are definitely not those individuals who are actually involved in the daily instructional efforts pertaining to handicapped children. They are not parents; they are not teachers; they are in most instances not even educators. They are in fact quite removed, for the most part, from the handicapped child's total community, both home and school. Furthermore, we noted one other characteristic of notable frequency among these detractors, a deep and abiding commitment to the continuing analysis of the great public policy issues, such as the Federal-State confrontation. While we believe that these issues have great significance in university faculty clubs and other public policy forums, they have no significance whatsoever in the daily business of trying to educate our Nation's handicapped children.

I would like to bring to you once again the commitment of the 70,000 members of the Council for Exceptional Children, people who are on the daily firing line of implementing this law—teachers, administrators, and others who are trying every single day to make this Act work.

I bring to you once again, as I have year after year for the past 5 years, their commitment not only to the spirit but to the letter of this law. I hope, Senators, that we can keep that in balance as we discuss the variety of amendments that have been proposed by the various State governmental groups.

I would like to now address specifically—and as briefly as I can—some of the issues that the Education Commission of the States and other groups have raised concerning Public Law 94–142.

Perhaps the most persistent argument that these interests have brought forth against the law is the cost of compliance. We certainly do not disagree that it will take more Federal, State, and local funds to educate handicapped children. However, there are some aspects of the argument that deserve closer scrutiny. First of all we—and I do not believe anyone—knows how much it will cost. I find it very interesting that Lieutenant Governor O'Neill noted the cost of $9.2 billion. The National Conference of State Legislatures, the Education Commission of the States, and the Governors' Conference in their report they submitted to this committee said it would cost $3.2 billion. Now, very honestly, I do not know if the figure is $3.2 billion, $9.2 billion, or $1 billion. However, we do know that it will cost more.

Why do we know, and why do we not believe that anyone really knows? First of all, the cost of adding more children into an ongoing program is not proportionally as expensive as the initial children in the program cost. So, to simply say that we have 10 kids in the program and it costs so much, and now we will multiply it by the next 10, and the next 10, is an unfair way to judge what the actual increase in cost might be.

Second, as more community-based services are available, there will be less dependence on high-cost residential programs. If we bring children from expensive institutions into community services, we might find that while community services increase in cost, total statewide costs will decrease because of the deinstitutionalization.

We certainly have no way of predicting inflation and rising salaries as well.

But even if we were to agree on, let us say, the $3.2 billion figure, it is important that this figure be placed in perspective. Based on statistics of the National Center of Education Statistics, $67.9 billion was spent on elementary and secondary education in the United States during school year 1975–76. This figure is a 9-percent increase over the preceding year; that is 9 percent just due to rising inflation and salary costs. The $3.2 billion figure reported by the National Conference of State Legislatures represents a sum equal to about half of what education systems spent last year just to meet inflation.

So, what are we really talking about? $3.2 billon, Senators, sounds scary to me. I have difficulty thinking in terms greater than $10, or $100, or perhaps $1,000—but to say $3.2 billion certainly sounds frightening. But, $3.2 billion compared to what? Compared to $67.9 billion that was spent on elementary and secondary education. And what are we talking about? We are talking about a 4.5 percent increase in the overall cost of education; in order to educate all our handicapped children, that increase being only half of what inflation alone did to education last year.

Again, I do not want to say that it will not cost money, but I would hope you would keep these figures, which sound astronomical, in proportion to what the total costs are.

Third, when we talk about the cost of "implementing Public Law 94-142," it is critical to bear in mind that there is very little in the law that has not already been required to one degree or another by courts and by State legislatures. We therefore believe it is inappropriate for State interests to categorize this law as placing a unique financial burden upon State and local governments especially when these same interests sought Public Law 94-142 to help them meet their already existing obligations.

I would commend Lieutenant Governor O'Neill particularly for the efforts the State of Massachusetts has undertaken. I would just indicate that we see no way in which Public Law 94-142 places a greater financial burden on the State of Massachusetts, for example, than the State of Massachusetts has already sought to place upon itself.

There is an indication on the part of varying State interests that are coming before this committee of an unwillingness on the part of the Congress to finance Public Law 94-142. In a document of May 9, which they submitted to Members of the House and Senate, they offered a tremendously unfair characterization of congressional action in the appropriations area; they observed—quite incorrectly—that the Senate budget figure for Public Law 94-142 falls 20 percent short of the authorization for fiscal year 1979. This conclusion indicates no knowledge of the facts. The reason that the money for fiscal year 1979 is less than was anticipated is only because the child count was less than was anticipated. The Congress in both the House and the Senate committees are very close to full funding based upon the projection of what the child count will be.

I would also note that the House report language of its Appropriations Committee clearly states that if sufficient funds have not been provided to meet the full authority as generated by next school-year's child count, a supplemental would be considered in order to try to meet that full requirement.

In summary, I think it is unfair to characterize the Congress as not fulfilling its obligations under this act.

There are some who contend that Public Law 94-142 places some procedural and accountability requirements that are not required by section 504, and not required by State law or court orders. What are some of those requirements that they claim? First, that Public Law 94-142 requires special recordkeeping. Let us look at that issue. What is the special recordkeeping that is required?

One, the States submit a plan. The States have been required to submit a plan for education of the handicapped since 1967. Public Law 94-142 does not make an additional requirement in that respect.

Second, they argue that the local application is a new requirement. I would contend that from the standpoint of a local school district the local application is the greatest thing that has ever come along. For years, in order for school districts to get their money under the old title VI(B) program, they had to write grants. Anyone who has been in that business knows how difficult and time consuming it is. This committee, for the first time, broke from that tradition and said, "We will allow the locals to simply write an application saying that they intend to comply with the act, and then let the money flow," thus removing the silliness of the grant business.

I would also note, for example, the States of Florida, Massachusetts, Colorado, Texas, and Minnesota already require local applications of their school districts. I would further ask that we be careful when we talk about—when the States argue that there is a data barrage in this act, there is too much recordkeeping. What are the questions that the act asks the States to submit data on? How many children are you serving? How many teachers do you employ? How much money is needed?

Are those questions that are unreasonable for a State to ask of its school districts? Are those questions that we would really think place an unfair burden on the States to provide? I think it is fully within the authority of the Congress and not overstepping the balance of fair and reasonable Federal-State relations that States ought to be able to tell us how many children are being served; how many people are being employed. And if their systems are not sufficient to provide that, then I think the question ought to be, "Why not?" rather than removing such requirements.

I would like for a moment to discuss the child count issue. I think this can also be a very misleading issue. We would certainly share the concern that the child count is low; the child count is lower than we thought it would be. We are very frustrated because the estimates with respect to what the child count would be were estimates that the States provided; they were based upon figures that the States had been providing for years on how many children they were serving. The child count certainly does come in lower than the figures. We think that there are assuredly some reasons. One that has been raised is the question of unduplicated count. For years what the States were doing was counting a child who was, let us say, mentally retarded and also had a speech problem, as being two children. A child who had a limp as well as a speech problem, was also counted as two children. So, we had children who were counted as more than one, sometimes two, three, four, or five children.

There have been arguments set forth by the States as to why that makes sense, and I do not necessarily dispute those arguments. However, I think, Senators, that it is very misleading to say that we lost 400,000 children. We did not lose 400,000 children. States perhaps lost their ability to generate funds for 400,000 children by not counting many children two and three times. But, the children did not disappear. So, to say that there were eligibile children who under this law could not be counted is an incorrect statement. To say that our counts are lower because we cannot duplicate our counts is perhaps a correct statement. But I would want you to not feel that somehow because of counting machinery that 400,000 children were wiped out of their entitlement for count under this act.

Now, permit me to briefly turn to the issue of State education agency responsibility and State supervision. This is the requirement that says that the State education agency shall be responsible for assuring the requirements of this act and also for providing general supervision and setting standards. The argument is given that this will raise constitutional and other difficulties, impeding the currently required State administrative relationships. That different constitutions, statutes, and administrative arrangements exist in different States is certainly well known by all of us. Yet, despite these differences, a variety of legal arrangements can be utilized to meet these requirements. Frequently, for example, written interagency agreements are developed to meet those needs. CEC, over the past decade, has been working with States on such arrangements.

As only one example of what can occur, in the State of Florida today, a cooperative planning agreement has been written between the Program Office for Mental Retardation and the Department of Health and Rehabilitative Services, and the Department of Education, in which all of these agencies have come together and have set forth a set of arrangements between them that makes it possible to carry out the requirements of the act.

We think the argument is shallow that says the States are prohibited by their laws or constitutions from complying with this act. What is difficult is the reality that State agencies do not want to work with each other, and that they do not want to give up their own little turfs; and further that the resolve to these questions is a political problem within the States. We concur with that. But we believe to seek changes in the law on what is perhaps one of its most critical provisions, that is, the guarantee that children do not get lost between the bureaucratic shuffle of the agencies, as well as to do away with that in order to protect the political problems of various State agencies, does not, in our opinion meet the best interests of children.

Senator RANDOLPH. By that, do you mean to say there has been competition within the agencies of States to the point where more emphasis is placed on the services than on the individuals receiving these services?

Can there be a simplified count procedure that identifies Mary Smith, or John Jones, without counting the services?

Mr. WEINTRAUB. I think so. I think we have to look at the purpose of the child count, Senator. The purpose of the child count is a mechanism to deliver money to the State. It was one part of a formula that was reached, an agreement in order to decide how much money the State would receive.

I contend that the child count issue is only a relevant issue as it relates to the question of the total amount of money a State receives. One could argue that, rather than even tampering with this issue, what one might want to do to assure that the States got their full entitlement would be to raise the percentage of the average cost of education. For example, it is now 5 percent; we could raise it to 7 percent and the States would get all the money that they are entitled to this year.

So, what I am saying is that the child count issue is really out of perspective in the sense that it does not deal with the entry of children into services; it rather deals with the total amount of money that a State gets. I think that the States are placing that issue out of proportion to its significance.

I would like to just highlight one other area, if I may—I know time is short. But I think it is an area that on the surface sounds appealing, but is indicative of our feelings about the total thrust of the package that the Education Commission of the States and the other groups have presented.

One of the arguments these organizations have offered is that Public Law 94-142, because of the manner in which it distributes money to local school districts, does not contribute to the disequalization of the wealth relationship among school districts. In other words, wealthy school districts receive the same amount per child as the poor school districts. We agree that the formula does not contribute to equalization of wealth. Realizing this, this committee placed into the law a provision that allowed State officials to remove money from one school district and give it to another school district, if that district was believed to be serving its handicapped children, and other districts needed greater help.

That provision was strongly lobbied for by the same groups that now oppose this provision. Why? Because they realize that it is difficult to "bite the political bullet" and to say, "OK, we are going to take money from this district and give it to another one"; they have said State governments cannot do that. On the same hand, they are turning to the Congress and are asking the Congress to do this. We think that is highly unreasonable. We also think that since very few States have set up their own equalization formulas, the proposal offered by these States allow the money to simply go into a State formula and let the State distribute it, will do two things.

One, it will contribute to disequalization where States already have disequalization; second, and perhaps most importantly, we fear that it will be used by States to reduce their own contributions as well as to lower and increase the total liability of school districts.

I think I would like to close with that. There are other issues that we have raised in our statement, which I know will be considered as part of the record. Thank you very much.

Senator RANDOLPH. Mr. Weintraub, very quickly, do you feel that Public Law 94–142 adequately addresses the need of native American children? As you know, we had some discussion of that yesterday.

Mr. WEINTRAUB. The answer would be, yes, I think the law in itself adequately addresses the needs of native American handicapped children. The problem is that the Federal machinery of the Bureau of Indian Affairs particularly in carrying out their obligations under this act are not sufficient. The result may be that we may need to consider in the future, amendments to the act in order to deal with that. I do not think it is the act that is deficient, but Senator, I cannot begin—it would take hours for me to explain to you the actual horror that we have experienced in working with the Bureau of Indian Affairs to get them to meet their legal obligations under the act.

Senator RANDOLPH. If you want to meet with our staff, that would be very cooperative and helpful. This is a matter we want to proceed with.

Mr. WEINTRAUB. I will be glad to. I appreciate your continuing interest in that problem, sir.

Senator RANDOLPH. Now, I think I can say quickly that I agree with you that Congress met its fiscal obligation on the public law for 1978. In fact, it was more than necessary; is that correct?

Mr. WEINTRAUB. I would respectfully caution on the word "necessary." I would say more money than the State-generated accounts do receive. I would contend that all of the money that was appropriated certainly will be necessary.

Senator RANDOLPH. $65 million.

Mr. WEINTRAUB. That is right.

Senator **Randolph**. And it is my impression that there are those who feel that the formula of this law does not generate sufficient funds. What is your comment on that?

Mr. **Weintraub**. I certainly would not want to disagree that this formula does not generate as much funds as I would like to see.

Senator **Randolph**. Do you think the formula should be changed?

Mr. **Weintraub**. No. I think there are many things I would like to see, and that everybody would like to see moved around, changed around, and all those kinds of things. The fact is that this act was over 4 years in development. I believe that the hearing record was 11 volumes. I believe that many of the witnesses that are coming up to oppose the act today, testified during the course of those hearings. I believe the hearings, uniquely, were held all around the country. I think we have a good act, Senator; and I think it is time to give it a chance to work. If it does not work, then we ought to come back and change it. I do not think we know well enough yet whether it does work, or does not.

Senator **Randolph**. Thank you very much. Senator Stafford?

Senator **Stafford**. Thank you, Mr. Chairman. I am glad to add my welcome to yours, Mr. Chairman, of Mr. Weintraub. I think you have made an excellent, moving statement; it will be helpful to us in the committee. I think the Council for Exceptional Children has a very able spokesman in you, Fred.

I have simply one question at this point, and that is raised by testimony of Lieutenant Governor O'Neill. He suggested that allocations be based on the per pupil cost in his State, rather than the present method of using national per pupil cost. Would you care to comment on that? Either now, or for the record later.

Mr. **Weintraub**. Well, let me just comment very briefly. I would recall the history of the development of the formula. I am sure the Senator from Vermont and the Senator from West Virginia have been through numerous exercises of developing formulas for pieces of legislation.

Senator **Randolph**. We helped some, hurt others.

Mr. **Weintraub**. I think the Senator from West Virginia has probably answered the question. Certainly, we would support—and did support at the time—that some of those kinds of factors need to be taken into account. If you can remember, the hardest struggle with respect to this act was not the struggle over the rights and protections, but the hardest issue was finally resolving the formula, a formula that was "least painful" to the majority. I think that is in the end the reality of deciding how moneys are allocated. I do not think there is anybody who is totally happy with the formula.

But while I would concur with Lieutenant Governor O'Neill about his concern over the formula, at the same time one has to say, what becomes the only politically viable answer. I think that the formula agreements that were reached are representative of that. I would certainly not like to see that debate opened once again.

Senator **Stafford**. Thank you very much.

Senator **Randolph**. Thank you, and your associate, also.

Mr. **Weintraub**. Thank you.

[The prepared statement of Mr. Weintraub and his responses to additional questions by Senator Randolph follow:]

STATEMENT OF

THE COUNCIL FOR EXCEPTIONAL CHILDREN

to the

SUBCOMMITTEE ON THE HANDICAPPED

of

THE SENATE HUMAN RESOURCES COMMITTEE

with respect to

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

June 21, 1977

Presented by:
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Mr. Chairman, Members of the Subcommittee on the Handicapped:

I am Frederick J. Weintraub, Assistant Executive Director for Governmental Relations of The Council for Exceptional Children.

We thank you for the opportunity to appear before this distinguished panel of the Senate Human Resources Committee to offer the views of The Council for Exceptional Children with respect to P.L. 94-142, the Education for All Handicapped Children Act. May we also take this opportunity to express once again to you, Mr. Chairman, the continuing admiration and warm appreciation of the membership of the Council for your unrelenting efforts on behalf of America's exceptional children.

As you know, Mr. Chairman, The Council for Exceptional Children is a national organization with a membership of approximately 70,000 professionals in the field of special education. One of the most fundamental ongoing missions of the Council, which has brought us to Capitol Hill on so many occasions through the years, is to seek continual improvement of Federal provisions for the education of America's exceptional children and youth, both handicapped and gifted.

We find ourselves now more than a year and one-half beyond enactment of the landmark P.L. 94-142, that most significant Federal affirmation, in concert with corresponding State legislative mandates and court decrees, of the right to a free, appropriate public education for all of this Nation's handicapped children. Furthermore, we are but a few months away from Federal, State and local implementation of major substantive provisions of this Act.

Because this law addresses the real instructional needs of children rather than systems-oriented factors, the Act certainly has generated its fair share of detractors. But we would contend that the number of such detractors are far outweighed by the number of both organizations and individuals in this country who not only are staunch supporters of both the mission and the consequent mechanisms of P.L. 94-142, but who are also determined guardians against crippling amendments — should the door be thrown open to such amendments. We believe, Mr. Chairman, that -- on balance -- these hearings will amply demonstrate that broad and solid base of continuing endorsement.

Who are the detractors? It has been our recurring observation that they definitely are not those individuals who are actually involved in the daily instructional environment of handicapped children. They are not parents. They are not teachers. They are, in most instances, not even educators. They are in fact quite removed, for the most part, from the handicapped child's total community, both home and school. Furthermore, we observe one characteristic of notable frequency among these detractors: a deep and abiding commitment to continuing analysis of the great public policy issues, such as the "Federal-State confrontation." Frankly, such issues have great significance in a university faculty club, but practically no significance whatsoever in the daily business of the classroom where the future well-being of vulnerable children is at stake.

Mr. Chairman, it may be worth noting that, when the issue becomes that of exactly which professionals will actually be on the front line with the difficult but challenging task of implementing this law, our members of The Council for Exceptional Children certainly stand in the forefront of that group. But while our members have "their feet to the fire" to fulfill the mission of P.L. 94-142, I am here today on their behalf to reiterate their continuing support for that law, and their continuing opposition to any crippling amendments.

It is not our purpose today to discuss again, "Why P.L. 94-142?" "Why the specific component parts of P.L. 94-142?" Literally a dozen volumes of Senate and House hearing testimony coupled with the larger legislative history accumulated over four long years of careful Congressional development of this Act provide thorough and complete answers to those questions. Rather it is our purpose today to cite the criticisms of P.L. 94-142 that we have perceived, and to offer our response to those criticisms.

Cost of Compliance

Perhaps the most persistent argument that some interests have put forth against P.L. 94-142 is the cost of compliance. We do not disagree that it will take more Federal, State and local funds to educate all handicapped children. However, there are some aspects of the argument that deserve closer scrutiny.

First, we do not know how much it will cost. There are too many unreliable variables that affect accurate projections. There may be fewer handicapped children than incidence projections might otherwise indicate. The cost of adding more children into an ongoing program is not proportionately as expensive as the initial children in the program cost. As more community based services are available, there will be less dependence on high cost residential programs. Inflation and rising salaries are always unpredictable.

Second, if we agree with the National Conference of State Legislatures that an additional sum of 3.2 billion dollars will be necessary, it is important that that figure be placed in perspective. Based on NCES statistics, 67.9 billion dollars were spent during school year '75 - '76 on public elementary and secondary education. This figure is a 9% increase over the preceeding year. The 3.2 billion dollar figure quoted by NCSL represents a sum equal to about half of what the education systems spent to meet the cost of inflation and only represents a 4.5% increase in the overall cost of elementary and secondary education. This is particularly dramatic when it is realized that handicapped children may comprise over 10% of the school age population.

Third, as we discuss in greater detail shortly P.L. 94-142 requires little that courts and States have not already required. We, therefore, believe it is inappropriate for some interests to characterize the law as placing a "unique" financial burden upon State and local government. These same interests sought P.L. 94-142 to help them meet their obligations. P.L. 94-142 does that. To date, the Congress's authorizing and appropriating committees have met their obligations under the law, and it is critical that that continues. But now State and local government must be required to put their rhetoric aside and meet their obligations to handicapped children.

Congressional Appropriations

Some apparently doubt the Congressional willingness to provide more dollars under P.L. 94-142. For instance, in a May 9 document submitted to Members of the House and Senate by five State-level organizations, one observes a tremendously unfair characterization of Congressional action in the appropriations'area. They observe - quote inaccurately -- that the Senate budget figure for P.L. 94-142 falls some 20 percent short of the authorization for fiscal 1979. That conclusion indicates no knowledge of the facts: that with a child count in the next school year that averages out at 4 million children (which would still have to be approximately one-half million more children than counted in this school year) the authorization ceiling thus generated would be approximately $600 million.

But a larger issue is being raised by this group through this inaccurate characterization of the facts. Frankly, they are suggesting that the Congress is not committed to appropriate funding. Again, the facts suggest the opposite In recent appropriations action (again, keeping a $600 million minimum ceiling in mind) the House has recommended an advance appropriation for fiscal 1979 of approximately $535 million, which would include a carry-over of approximately $70 million from fiscal 1978 which was previously appropriated but not generated under the first child count. Moreover, the Senate recommendation is some $20 million higher.

We as an organization are disturbed at this unfair characterization of the Congressional funding commitment when we observe the notable step taken in the House appropriations bill (and we sincerely hope the Senate will concur) of stating publicly that a supplemental appropriation will definitely be considered if the child count in the coming school year should generate a larger entitlement that the actual appropriation now being finalized. We hope that all of these same organizations will begin to join with us in actively encouraging the Congress to continue to enhance the Federal fiscal contribution.

New Requirements?

There are some who contend that P.L. 94-142 places some procedural and accountability requirements that are not required by Section 504, not required by State law or court orders. Specifically mentioned have been special recordkeeping; development of new accounting systems, accelerated personnel development and certain related services. We content that on each of these issues, P.L. 94-142 is not setting forth new requirements, but rather what the law requires and what causes some to balk are the requirements to better document the education decisions that are being made for handicapped children. But let us explore these issues further.

First, some have stated that P.L. 94-142 requires special recordkeeping. Section 613 and Section 614 of the Act set forth certain reporting requirements for States and localities in the form of a state Plan (Sec. 613) and local applications (Sec. 614). The issue of States submitting an annual unified State plan is not a new requirement under this Act. It has been required since original passage of the Education of the Handicapped Act in the late 1960's. Ostensibly States have accurately been certifying to the Federal government that which occurs in the States regarding the education of handicapped children. So, on the State level, these reporting requirements are not new, and therefore, should not be so characterized.

What may be raised however as a legitimate concern regarding recordkeeping is the matter of the local application, because this will be the first year that all localities which want to receive a local entitlement will be required to submit a written set of assurances regarding the manner in which the locality is providing a free appropriate public education. For a great many local agencies, however, this is not a new requirement. For example, the States of Florida, Massachusetts, Colorado, Texas and Minnesota, to name several, have long required annual local applications.

One need only ask local schools about the extensive requirements that the States themselves place on localities on every education issue to know that localities are quite conditioned to these reporting requirements. If P.L.

94-142 was requiring more than localities can report, why then are many of the staunchest supporters of this Act the very personnel who work with handicapped children in the localities?

The second issue that some have argued focuses on the "development of new accounting systems." We contend that the Act is not requiring new accounting systems at all. Histocially, school districts have been required to at least annually submit various types of data to the State. These data requirements have placed a responsibility on local schools to keep records on children and establish a system that is accountable. Again, P.L. 94-142 does not necessarily require more but rather better information regarding on-going educational decision making. The Federal law is not requiring another layer of management for States and localities but rather is asking for more specific, accountable information.

For example, every school district in this country has an established procedure for determining if a child is handicapped and whether or not the child requires special education and related services. For a number of years, good practice has indicated that teams of professionals should contribute to the education decision making for the child. As a result, many well meaning professionals have argued and some State policy now requires specific numbers of professionals to be involved in the assessment and placement of a handicapped child. Now several problems occur as a result. First, some States maintain policies which require input from as many as nine or ten professionals such as psychologists, social workers, nurses, counselors, teachers and administrators. They diagnose, report and meet with respect to each handicapped student. Depending on the severity of the child's handicap, it may make some amount of sense to involve all of these professionals. However, proper diagnosis and reporting procedures for many children do not always warrant the extensive and very costly (financially and in terms of amount of time) requirement of involvement of so many professionals.

The Congress, in its wisdom, through the individualized education program requirement of the Act, in fact only mandates the involvement of three persons, the parent, the teacher, and a representative of the local education agency in the decision making process. Inclusion of the student is permissive when appropriate.

To argue that this requirement is more expensive is only true if States and localities are placing this requirement on top of what they are currently doing. If in fact, States and localities take a careful look at their management and accounting systems for handicapped children and refine and streamline them, then in fact, we contend that there is a strong suggestion that the new accounting system will require fewer people, less paper to xerox, consume less professional time and therefore, cost less.

The third issue of some concern which has been raised relates to personnel development. What we believe the Congress is concerned about and why the Act provides for comprehensive personnel development is the grace concern we all share that, in order for each handicapped child to receive a free, appropriate education, there must be appropriately qualified professionals who will be responsible for implementing the individualized education program. The Act sets out procedures that States and localities are required to document with respect to how they are going to supply adequate professionals. The States, through a cooperative manpower document (Title VI-D of ESEA) have been ostensibly reporting to the Office of Education for the last five years the training needs, the training resources and most importantly a cooperative plan of action relative to what the State, institutions of higher education and the localities must do in order to meet these training needs. If we accept these cooperative manpower documents as valid, then why are the concerns raised now when States have been engaged in documenting personnel development needs for the past five years?

The fourth issue of concern regards certain related services that might be required to assist a handicapped student to receive a free appropriate education. We acknowledge the fact that the related services area is one with which some school districts have previously had little experience. If a child needed a specific related service but the school district could not provide or arrange for the provision of such service, then the child's unique needs were placed in jeopardy -- either the child went without the service or in many cases, an extreme financial burden was placed on the family to pay for the service. One of the fundamental objectives of P.L. 94-142 is to correct this situation and provide a mechanism of accountability that will assure that each handicapped child who requires special education and related services will receive them. The Act clearly requires localities to end the practice of simply permitting the child to fall between the cracks of the various public agencies. The Act is not necessarily requiring schools to themselves hire all new professionals but rather is requiring them to make certain that each handicapped child has the services which the child needs, whether that be done by link-up to existing systems and their resources, or by the development of new resources if none are available.

Counting

Considerable attention has been accorded of late to the issue of what the States cannot do as the statutes of P.L. 94-142 relate to the child count for purposes of the funding formula. While we would acknowledge the existence of legitimate difficulties in this area, we would strongly suggest that such difficulties are not of sufficient magnitude to warrant an amending of the statutes.

We are inclined to concur with the complaint with respect to the prohibition against a cumulative count. Under the Act, children may be counted for purposes of the Federal funding formula only on October One and February One in each school year. A respectable case can be made that a good number of children pass in and out (for instance, speech therapy and programs for emotionally disturbed children) of the special instructional environment during the course of a given school year, but that on any given October One and February One many of these children are "out."

However, on the issue of the prohibition against a duplicated count, that is, each child may be counted only once regardless of the number of handicapping conditions, we part company with the critics.

Parenthetically, we observe the following statement in the same May 9 document submitted by certain State-level organizations alluded to previously:

> The exact magnitude of the undercount produced by the current census mechanism will not be known until later this year, but preliminary figures reveal that it is substantial. According to one survey of 35 States, the requirement of an unduplicated count resulted in 396,000 fewer aid-eligible pupils that would have been generated by a duplicated count.

This statement is both inaccurate and terribly misleading since it suggests that the Congress, in the formulation of P.L. 94-142, simply wrote off some 400,000 eligible handicapped children. The requirement of the unduplicated count does not result in "396,000 fewer aid-eligible pupils," but rather it means that 396,000 other handicapping conditions of x population of counted children cannot be thrown into that count. To reiterate: all handicapped children receiving special education may be counted under P.L. 94-142, but not all of the handicapping conditions of any given child.

Essentially two contentions are being made with respect to the prohibition against a duplicated count. When some handicapped children cost more to educate than other handicapped children, why don't we receive more money for the more expensive educational program ? That certainly is a legitimate question, but one must not ignore the other side of that same coin: under the formula of P.L. 94-142 the States also do not receive less for children who cost less than other children. A child receiving speech therapy generates the same amount of money as does a child in an instructional program for the deaf-blind. P.L. 94-142 is based upon an assumption about the average cost of educating handicapped children.

The second contention raised bears upon a larger anxiety, namely, that because of these counting constraints, the States cannot generate funding ceilings originally estimated when P.L. 94-142 was in development. Again, the facts tell otherwise. Even using what very likely will be too low a count of four million children in school year 1978-79, and even not allowing for an inflation factor in the national average per pupil expenditure between school years 1977-78 and 1978-79, it appears that we will generate at least the same amount of money for the fiscal 1980 entitlement as originally estimated for that fiscal year in the House-Senate conference on P.L. 94-142 in the Autumn of 1975. Thus, while the start-up for fiscal 1978 and 1979 on the five and ten percent factors have indeed been somewhat problematic from the standpoint of fiscal authority generated under an initially low child count, the gap between original and later authorization estimates is being rapidly closed. We would therefore contend that this lengthy dialogue on the supposed weaknesses of the funding formula has been rendered moot. We would further recommend that much of the energy expended by certain State-level organizations in a debate with respect to the funding formula of P.L. 94-142 be redirected toward eliminating the all too numerous shortcomings with respect to the in-State procedural systems for counting children.

SEA General Supervision

Of concern to some is the requirement in Section 612(6) of P.L. 94-142 that deals with the administrative responsibility of the State education agency in assuring that each handicapped child needing special education receives that service in accordance with all of the requirements of the Act. The specific aspect of this requirement that is questioned pertains to the assignment to the State education agency of "general supervision" for the special education programs for handicapped children that are provided by State or local agencies other than the education agencies. This section also requires that the special education of handicapped children in "other" than education agencies shall meet the education standards of the State education agency.

The concern that is alleged with regard to this requirement is that some States will have constitutional or other difficulties impeding the required administrative relationship. That different constitutions, statutes, and administrative arrangements exist in different States is well known. Yet, despite these differences, a variety of legal arrangements can be utilized to meet these requirements. Frequently, for example, written interagency agreements are developed to meet such needs. The Council for Exceptional Children has over the past decade been involved in designing many such arrangements. As only one example of what can occur, in the State of Florida today a cooperative planning agreement has been written between the Program Office for Mental Retardation of the Department of Health and Rehabilitative Services and the Department of Education.

Clearly, the intent of this section of P.L. 94-142 is to create consistency in administration and adherence to education standards including the qualification of personnel in educating handicapped children, regardless of where they receive their program. The result will be an effective capacity for State education agencies to assure that all handicapped children have available to them a free public education.

By inclusion of this requirement in the Act, the Congress recognized and attempted to deal with a major problem concerning the education of handicapped children who for a variety of reasons receive their education through other than education agencies, such as State departments of mental retardation, welfare, health mental hygiene or others. Frequently the educational services received by these children were non-existent or of limited quality and quantity, particularly as contrasted with their peers enrolled in public school programs administered by State and local education agencies.

Factual substantiation of the failure to appropriately educate these children can be found in many of the right to education lawsuits that preceded P.L. 94-142 in which the "other" agencies were included in the listing of defendants. Of particular note is that in Wyatt v. Stickney, the first right-to-treatment suit brought in 1970 in Alabama, specific standards were ordered to provide an appropriate education for the mentally retarded children residing in Partlow State School, which was operated by the Department of Mental Health. In the well known Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, specific attack was made upon a statutory gap which freed the Department of Welfare, which was responsible for caring for some retarded children, from providing any education services at all. A related problem for some deaf or blind children has been that the legal responsibility for their education has rested with independent or autonomous State boards or commissions that also have failed to establish and operate programs that were appropriate for some of their children. Until recently, for example, Kentucky had such an arrangement for deaf children. Recent changes, however, have now extended the responsibility for those children to the Kentucky Department of Education.

That a variety of agreements can be used to meet the requirements of the Act has already been indicated in the proposed regulations for implementation of P.L. 94-142. That such agreements are often politically difficult within the States must be recognized, particularly when such agreements require changes in the behavior of one or more agencies. However, such difficulties must not be allowed to perpetuate the inappropriate education of any handicapped children.

Surrogate Parent

One of the most frequently heralded elements of the entire Act is the careful and precise structuring of the procedural safeguards provided to insure that all decisions regarding the education of handicapped children occur in a rational and fair manner. The essence of these safeguards is that the interests of the child be primary and in some instances may be different from those of the school and/or the parents. Yet, this modern concept is built upon traditional due process which requires that for minor children, their parents be totally involved. Frequently, it is the parents of the child who initiate the due process mechanism in response to a proposed decision of the public schools.

Some however have raised questions about the surrogate parent provision (Sec. 615(b)(1)(B)). Handicapped children whose parents are unknown, unavailable or who are wards of the State approach traditional due process at a distinct disadvantage. This was recognized by the Congress in P.L. 94-142 in the requirement that such children be provided with a surrogate parent for the varying rights and protections of the Act. Since it was recognized by the Congress that employees of agencies often as a result of their employment are frequently unable to divorce that interest from their child decision making responsibilities, they are in P.L. 94-142 specifically prohibited from serving as surrogate parents. Examples of unhappy results of these conflicts have recently been brought to the Nation's attention through the Congressional hearings held regarding the out-of-State placements made by welfare workers acting on behalf of foster children.

The intent of the P.L. 94-142 surrogate provision is to guard against the inappropriate education of handicapped children without available parents. It further serves to restrict service as surrogates to people independent of child service agency employment. This provision is exceptional in its intent since in addition to protecting children, it also protects public employees from being placed in a position inherently in conflict, a clear service to the employee as well as the child. Consequently, this provision of this law should remain as originally cast. However, we do recognize that there may be specific State child service agency configurations which sufficiently isolate those employees who are directly involved from those assuming other responsibilities. When this occurs, it may be appropriate for those without direct service responsibilities to serve as surrogates. If such arrangements meet the Congressional intent, then Congress should instruct the administration to so indicate through carefully drawn regulations.

SEA Appeal

In reviewing the procedural safeguards section of P.L. 94-142, some have questioned the requirement for the opportunity of State level appeals following the impartial hearing. The necessity for such an appeal reflects the Congressional concern as indicated throughout the Act whereby the State maintains the responsibility for educating handicapped children. Given this responsibility there must be a State capacity to enforce its own requirements. In this case, those requirements will be contained in the annual program plan for the education of handicapped children.

While reiterating that this crucial requirement is appropriate and in fact mandatory, we recognize that in some States there are no provisions for such appeals to be conducted by the State education agency. Yet it is known that there are usually a variety of State-wide administrative procedures which incorporate the opportunity for an appeal. Consequently it would be our recommendation that in the regulations promulgated for this Act the States be permitted to utilize these alternative administrative appeals procedures. However, it must be added that whenever this approach is to be utilized the appeals that are conducted must meet all of the existing requirements of

P.L. 94-142. This means for example that when such appeals are held by other than the State education agency, they be governed by written agreement clearly establishing the SEA as the responsible agency.

In-State Distribution

There are some who argue that the distribution formula for funds under P.L. 94-142 contributes to disequalization in the wealth relationship among school districts. In other words, wealthy school districts receive the same amount per child as do poor school districts. We concur that the formula in P.L. 94-142 does not contribute to equalizing wealth among school districts, but in a similar vein the same problem exists with almost all other Federal education programs. P.L. 94-142 does make an effort, however, to ameliorate the problem. Section 614(e) provides that

> (e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611 (d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

This provision, which was lobbied for by State government, is now being attacked by State government. They claim that in order to utilize the provision, they would have to admit they are not providing the requirements of the Act to all handicapped children, and also leave themselves open to charges of favoritism. In other words, the States argue that they are not willing to bear the political consequences for bringing about fiscal equalization. Rather they offer an alternative which is to authorize the States to allocate the funds to local education agencies in accordance with a formula created by the State. In many States where no equalization effort is in effect, such a provision would have no positive impact. Secondly, in States which have discriminatory finance patterns, such an approach would only increase disequalization. Third and perhaps most importantly, we are fearful that such an approach would result in reducing the growth of State funding by using Federal funds to meet State fiscal obligations and increasing the financial liability of local school districts. For example, some State laws provide for the State to assume 100% or a significant portion of the cost of educating handicapped children. However, the State sets an arbitrary figure for that cost each year because of budget limitations and then throws the liability (legal and fiscal) onto the school districts. This situation could only be worsened if the proposal that the State be able to integrate the local education agencies' share of P.L. 94-142 funds into their existing financial distribution structure were allowed. In summary, we concur that the basic distribution formula of P.L. 94-142 does not contribute to school fiscal equalization. Section 614(e) provides a workable mechanism to deal with this issue that States find politically unacceptable although they lobbied for the mechanism. School equalization is an issue bigger than P.L. 94-142 and until such time as the Congress develops a nationally agreed upon strategy that would be applicable to all relevant Federal programs, we do not believe that P.L. 94-142 should be the vehicle to solve the problem. P.L. 94-142 cannot alone solve the problem, in any event.

The Individualized Education Program

There are those who suggest amending P.L. 94-142 by specifying that the written individualized education program (IEP) is not a contract for services. To adopt such a provision would render valueless the cornerstone provision of P.L. 94-142. The IEP is a management tool in order to link a handicapped child to the educational services he or she requires. The law says that the children are entitled to a free appropriate public education. Free appropriate public education is specified in the law as an education in accordance with the child's IEP. Thus, while the law does not describe the services set forth in the IEP as constituting a contract, to fail to provide those services would be denying the child a free appropriate public education and thus a valid grievance under the Act.

The reason this provision of the Act is important is that to determine that a child is handicapped and to then place the child in a program is very serious business. The decision is one of the most, if not the most, important decision that will be made in the child's life. That is why the courts, State legislatures, and the Congress have required that placements be appropriate to the child's needs and that procedural safeguards be available. The IEP is a mechanism to reach and document agreement on what is appropriate. To do what some are suggesting, namely, asserting that there is no requirement to provide what has been agreed to, makes a mockery out of the entire process and throws children back into the state of jeopardy that this Act and the courts have tried to prevent.

It should be clarified that the Act does not require that the educational objectives set forth in the IEP be achieved, but rather provides for at least annually reviewing the child's progress and adjusting the IEP accordingly. We agree with this provision of the Act but we strongly disagree with any effort to dilute the obligation that services promised will be provided.

Full Service Dates

For those who find the "dates certain" in P.L. 94-142, at which time a free, appropriate public education must be available to all handicapped children, to be "too soon" and "too much," quite a number of forceful counter-arguments could be raised.

For the moment, however, may we simply offer the following facts. Of all of the States, only five do not have mandatory statutes currently in effect for educating handicapped children:

Arkansas - 9/79
Kansas - 1979 (7/1/74 for DD)
Maryland - 1979 (court order: 9/75)
Montana - 7/79
North Dakota - 7/80 (as soon as ident. handicapped, must be served)

In Summary

Mr. Chairman, P.L. 94-142, the Education for All Handicapped Children Act, is a good Act, unusually well thought-out over a long period of time. It has withstood, and will continue to withstand, the test of both positively inspired and negatively inspired criticism. Moreover, to amend it at this juncture, when we are only a few months away from the school year in which some of its major provisions will be implemented, would fly in the face of reason. It will be beyond initial implementation that we will know in any responsible way what perfecting amendments may or may not be in order. Therefore, Mr. Chairman, we most strongly urge against any amendments in the spirit of the Act itself, which carries no expiration date.

Mr. Chairman, we again thank you for the opportunity given the Council to appear today on behalf of Exceptional Americans. In closing, may we simply reiterate that we stand prepared to make the full resources of The Council for Exceptional Children available to this Subcommittee as it fulfills its legislative charge with respect to oversight of the Education for All Handicapped Children Act of 1975.

Additional Questions in Writing from Senator Randolph

Answers to those Questions from The Council for Exceptional Children

Date of Actual Hearing: June 21, 1977

Subject of Hearing: Education for All Handicapped Children Act of 1975

1. The Council for Exceptional Children represents the largest professional group which works with handicapped children. Do your members see any problems with the implementation of the individualized education program?

   Of course our members see problems; one might better characterize them as "challenges." Obviously, for instance, many procedural matters must be attended to within the school environment in order to effectively implement the individualized education program. However, the continuing reinforcement to meet these new challenges emanates from the fact that the individualized program has been long-sought best professional practice.

2. You mention in your testimony that The Council for Exceptional Children has participated in several states in working out interagency agreements to deal with the state agency general supervision problem. From your perspective, what problems does this general supervision provision deal with and could you provide more details on the interagency agreements you have worked on?

   As to the first part of your question, Senator, this provision deals with at least the following problems:

   - The non-existence or limited quality and quantity of educational instruction for children receiving their education through state agencies other than the state education agency;
   - The behaviour of "bumping" children educationally from agency to agency, with no public authority taking responsibility;
   - The lack of assurance of at least a minimum of professional educational expertise in the supervision and certification of other than SEA-delivered state-agency programs.

   With respect to your second question, we have interacted on implementation of this critical provision with respect to states such as Connecticut, Rhode Island, Ohio, and Texas. We would be pleased to discuss particular states in detail at your request.

3. The Council for Exceptional Children has members who are administrators at the state, regional, and local levels of programs, and they will have to administer and complete the requirements for data and information. Have they raised any concerns about the provisions in the law?

Our members, being generally aware of the fact that federal law is not talking so much about more, but rather, better data and information, seem most interested in knowing exactly what is required of them. Therefore, to meet this demand on their part, the national headquarters of The Council for Exceptional Children has developed and will continue to develop information and technical assistance products to assist in full understanding, both for our own members and the education community as a whole. Such products have already included: a multi-media package on the law, a primer on individualized written programs, a primer on due process, the availability of pre-developed on-site training institutes, a school district policy implementation manual - to name a few.

4. As an organization, your members and staff have considerable opportunity to meet with state legislators and administrators and their counterparts on the local level as well as parents and teachers. How would you characterize your experience and their reactions to P.L. 94-142?

It has been our universal experience that where accurate information on P.L. 94-142 is imparted and accurate interpretations of P.L. 94-142 are available, the law is either favorably received, or, with those who previously had a wholly negative attitude, a more positive disposition develops. It is lack of information and misinformation which have bred negative reactions in large measure.

Senator RANDOLPH. Caryl Kline? Caryl, if you will come to the witness stand. I tell you, I want to give a cheer for you and a remembrance for Wayne Morse. [Applause.]

Both of us were privileged to serve with him, and as you remember, he served on this committee.

STATEMENT OF CARYL M. KLINE, SECRETARY OF EDUCATION, COMMONWEALTH OF PENNSYLVANIA; ACCOMPANIED BY STINSON STROUP, EXECUTIVE ASSISTANT

Mrs. KLINE. Thank you, Senator; I remember well.

Senator RANDOLPH. The Labor and Public Welfare Committee; it was not Human Resources, then. Senator Morse's leadership of a bill on the floor was very impressive. We shall always remember him, especially for some of his programs for higher education. How soundly based they were.

You continue, of course, in that tradition as secretary of education for the Commonwealth of Pennsylvania. And you are accompanied by Stinson Stroup?

Mrs. KLINE. Stroup.

Senator RANDOLPH. Executive assistant. We note that earlier today a member of our committee—Senator Stafford was here—Senator Schweiker of Pennsylvania was here and wanted to present you formally.

Mrs. KLINE. I saw him.

Senator RANDOLPH. We will note his interest, and the reasons for his not being here now.

So, to you we give a warm welcome. There are personal considerations involved, but you come in your own stature, and we are delighted to have you proceed.

Senator STAFFORD. Mr. Chairman, before she does, in view of your reminiscence and my recollection of Senator Morse—I must say I am relieved, Mrs. Kline, that you are not wearing a red rose.

Mrs. KLINE. If I had thought of it, I would. But I am not going to filibuster, I assure you.

Senator Randolph and Senator Stafford, ladies and gentlemen, it is a very great pleasure for me to be here this morning. Senator, because I, probably more than anyone else in this room, remember your great contributions in the education battles that went on in the 1950's and the 1960's.

I am pleased to have this opportunity to share with you some of the concerns of the Commonwealth of Pennsylvania regarding the implementation of Public Law 94-142, the Education of the Handicapped Act.

Before I begin my discussion of this bill I would like to say that I heartily endorse the testimony of Governor O'Neill of Massachusetts. We in Pennsylvania have exactly the same problems. And as we are going through a battle trying to get a budget and probably will not have it by July 1, we are particularly cognizant of the financial implication of these regulations.

At the outset, it is important to recognize Pennsylvania's firm commitment to meeting the educational and other needs of its handicapped citizens. Pennsylvania was the first State to adopt formal procedures to protect the rights of handicapped students. These procedural protections have applied to all handicapped children in Pennsylvania for 2 years. We have been a leader among the States in the field of special education since the issuance of the now famous Pennsylvania Association for Retarded Citizens consent decree, known hereafter as the P.A.R.C. consent decree in 1972.

Our Commonwealth has well-developed programs and services for handicapped children.

Last year approximately 208,000 of our students, nearly 9 percent of our total student population received special educational services. Pennsylvania in the fiscal year 1978 will commit approximately $265 million to maintain and extend these programs.

Senator RANDOLPH. You feel, then, that Pennsylvania has not been lacking.

Mrs. KLINE. We have been leaders.

Senator RANDOLPH. Leaders.

Mrs. KLINE. Unfortunately it would seem that existing State programs and procedures were not carefully examined before the drafting of Public Law 94–142. As a result Pennsylvania and other States which have taken leadership roles in the effort to prevent injustice to handicapped citizens face a serious, indeed an almost insuperable problem in coordinating the new Federal mandate with what is already in place.

We do not challenge the goal of providing full educational services to the handicapped; nor do we question the granting of procedural protections to handicapped students and their parents. But I feel compelled to express my conviction that implementation of this act and the regulations proposed by Health, Education, and Welfare will not result in significantly better legal protection, or educational services for the handicapped in Pennsylvania. Implementation will be costly, confusing, and time consuming for all States, but particularly for Pennsylvania.

Public Law 94–142 and its attendant regulations have the effect of superimposing an additional Federal framework of programmatic requirements and legal procedures on an existing structure with which Pennsylvania school administrators, teachers, and parents are both familiar and comfortable. We in Pennsylvania have built this structure with great effort and at great expense. As is frequently the case, a law has been passed and regulations prepared to address and redress the failings of some States. Those States which have provided leadership are penalized by this lowest common denominator approach to developing national policy.

Pennsylvania is caught between a Federal court order and new requirements from the Federal legislative and executive branches. It should be noted that certain aspects of Public Law 94–142 and the proposed regulations contradict the P.A.R.C. consent decree, a 1972 court order to serve all mentally retarded children. Pursuant to that order we have in place a sophisticated process procedure which has been extended to all exceptional children.

We had planned to fit Public Law 94–142 requirements into that system, a system which we feel meets the requirements of the act. The Bureau for the Education of the Handicapped contends that it does not, and that a completely separate system needs to be developed for children not covered by the consent decree. I cannot emphasize enough that serious fiscal and administrative problems will result if we cannot incorporate Public Law 94–142 procedures into our present system.

Let me illustrate this situation by discussing the incompatibility of our State's current policies concerning the program placement conference and the interpretation by the Bureau for the Education of the Handicapped of the act's proposed regulations.

In Pennsylvania we make a considerable effort to involve parents in the development of the individualized educational program known as the IEP. We had planned to integrate the procedural requirements of State and Federal law by requiring the local educational agencies to send a letter to the parents that have handicapped children, explaining their due process rights, and setting forth a proposed IEP. Any change in education assignment would be based on that proposed IEP. The parents would have the opportunity to study the proposed IEP, and their child's assignment; and if they should wish, to seek independent advice and evaluation. If the parents agreed with the proposed IEP, no program placement conference would be necessary. If, on the other hand, they were dissatisfied with the proposed IEP the parents would be free to request a placement conference and a formal hearing.

This sequence which would integrate the IEP procedures of the act with our existing State system would help to keep expensive, time-consuming conferences to a minimum. I would remind the distinguished members of the subcommittee that every dollar spent on administering procedural requirements in a period of low growth in special education funding is a dollar taken away from direct, programmatic services to children.

However, we have been advised by the Bureau for the Education of the Handicapped that this system is unacceptable. Specifically, BEH takes exception to the idea of developing even a proposed IEP without direct parental involvement, and takes exception to the inclusion of a form by which parents may waive their right to a conference to discuss the proposed IEP.

The problem of coordinating new Federal requirements with those of the State is compounded by the ill timing of the Department of Health, Education, and Welfare's regulations intended to implement the act. These regulations have not yet been adopted. Nonetheless, we have been forced to develop our State plan on the assumption that the proposed regulations have the force of law.

Let me give you just one example of how the poor timing of the implementation of the act will affect our State. BEH is requiring that by October 1, 1977, an IEP must be developed for each child who is to be counted for the entitlement formula. This means that Pennsylvania must have 208,000 IEPs by October 1, 1977. You will note that by the testimony this morning the count asked for in the act and in the regulations does not take place until later in October. This is an unreasonably short period of time in which to generate such a requirement, the required IEP's. Additionally, the October 1 date is not required by the law. Regulations seem to have gone considerably farther than the requirements of the act. A law written with such unwarranted specificity creates serious problems of coordinating its mandates with State's practices.

Under this law we are mandated to identify, locate, and evaluate all handicapped children in the Commonwealth, and to establish priorities for providing a free appropriate public education for those children. The State education agency should be allowed to count any children who have been identified. Pennsylvania now provides special education and services to well over 200,000 children. Under the new proposal we would not be able to count these children for funding purposes unless an IEP has been developed for each one. It is not reasonable to require that an IEP be developed in the first month of the next school year. If IEP's are hastily developed for child count purposes they will not be the education tool that Congress intended.

A more reasonable interpretation of the act is that the IEP must be developed by September 1, 1978. On that date the State education agency is required to assure that all handicapped children age 3 through 18 are receiving a free appropriate public education. By September 1978 the State and local education agencies will have had time to develop IEP's for every handicapped child, and to make assurances based on the IEPs.

Our efforts to provide high quality special education services and to implement the act are further frustrated by our inability to get timely and reasonable assistance from the Department of Health, Education, and Welfare.

Let me list some of the specific provisions of Public Law 94-142 and/or its proposed regulations, which I regard as posing major obstacles for the Commonwealth of Pennsylvania.

1. A definition of related services which is broader than the State law, and which will prove expensive and difficult in its implementation. Further, the proposed regulations on related services greatly expand the definition of related services over that authorized in the act. I would suggest to you the counseling of parents; I would suggest to you social welfare provisions.
2. A requirement for parental consent prior to the evaluation of a student which will add another layer of due process hearings and delay service to the children.
3. An assignment of responsibility for all special education programs to the State education agency even though Pennsylvania law assigns certain special education and related services responsibilities to agencies other than the State education agency.
4. Funding authorization levels which are grossly inadequate, particularly as they pertain to start-up costs. The authorization for Federal funding is phased in over a 5-year period, reaching the level of 40 percent of the national average expenditure for elementary and secondary education in fiscal year 1982. In view of the start-up costs that will result from new programs and services, in-service requirements and new administrative costs, the formula should show higher percentages in the early years.

Let me say to you that in the State of Pennsylvania we now spend $3,300 per year for every one of our exceptional children. We spend $1,200 a year for our regular students.

These are by no means all of our concerns about Public Law 94-142 and the proposed Bureau of Education for the Handicapped regulations. An appendix will be submitted to you to accompany this testimony.

While my comments today have been critical, I do want to reiterate my own personal commitment and the commitment of the Commonwealth of Pennsylvania to educating handicapped people and providing them with procedural protections. We in Pennsylvania do not simply accept the broad goals of Public Law 94-142, we applaud Congress' motivation in addressing this important human question. We agree wholeheartedly with the notion that the worth of a society must be judged in part by the way it treats those least able to protect themselves.

It is simply our contention that Pennsylvania has demonstrated a commitment to the education of all handicapped children. The Federal Government should recognize that Pennsylvania has a system which meets the broad purposes and goals of Public Law 94-142. We should not be penalized by the imposition of an additional set of requirements when we have already faced up to these hard issues when many other States were doing very little or nothing for handicapped children.

Thank you.

Senator STAFFORD [presiding]. Thank you very much, Mrs. Kline, for your statement which will be helpful to this Subcommittee and the Full Committee, and the oversight hearings.

There are a series of questions that we have, which we would like to submit to you in writing for answers in writing.

The Chair is going to have to put the subcommittee on the mercy of the following witnesses because we are under orders from the Senate itself to conclude these hearings in 15 minutes. For that reason any questions we have will be submitted in writing.

We would ask the witnesses who follow Mrs. Kline to condense their statements as fully as possible so that we can try to let everybody who wishes to speak have a chance to summarize in the next 15 minutes. The full statements will be placed in the record, however, as if delivered, so the other members of the Committee and the Acting Chairman and the chairman can have a chance to review them.

Mrs. Kline, thank you very much.

Mrs. KLINE. Thank you. We shall be happy to reply in writing.

[The prepared statement of Mrs. Kline and additional materials follow:]

CARYL M. KLINE
SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA
TESTIMONY ON P.L. 94-142 BEFORE THE UNITED STATES
SENATE SUBCOMMITTEE ON THE HANDICAPPED
JUNE 21, 1977

SENATOR RANDOLPH, DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, LADIES AND GENTLEMEN:

I AM EXTREMELY PLEASED TO HAVE THIS OPPORTUNITY TO SHARE WITH YOU SOME OF THE CONCERNS OF THE COMMONWEALTH OF PENNSYLVANIA REGARDING P.L. 94-142, THE EDUCATION OF THE HANDICAPPED ACT.

AT THE OUTSET, IT IS IMPORTANT TO RECOGNIZE PENNSYLVANIA'S FIRM COMMITMENT TO MEETING THE EDUCATIONAL AND OTHER NEEDS OF ITS HANDICAPPED CITIZENS. THIS COMMITMENT IS NOT MERELY EMPTY RHETORIC; IT IS REAL, SUBSTANTIAL AND CONTINUING.

PENNSYLVANIA WAS THE FIRST STATE TO ADOPT FORMAL PROCEDURES TO PROTECT THE RIGHTS OF HANDICAPPED STUDENTS. THESE PROCEDURAL PROTECTIONS HAVE APPLIED TO ALL HANDICAPPED CHILDREN IN PENNSYLVANIA FOR TWO YEARS. WE HAVE BEEN A LEADER AMONG THE STATES IN THE FIELD OF SPECIAL EDUCATION SINCE THE ISSUANCE OF THE NOW FAMOUS P.A.R.C. (PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS) CONSENT DECREE IN 1972.

OUR COMMONWEALTH HAS WELL-DEVELOPED PROGRAMS AND SERVICES FOR HANDICAPPED CHILDREN. LAST YEAR APPROXIMATELY 208,000 OF OUR STUDENTS--NEARLY 9% OF OUR TOTAL STUDENT POPULATION--RECEIVED SPECIAL EDUCATIONAL SERVICES. PENNSYLVANIA IN FY 1978 WILL COMMIT APPROXIMATELY $265 MILLION TO MAINTAIN AND EXTEND THESE PROGRAMS.

IN SUM, I BELIEVE IT FAIR TO SAY THAT PENNSYLVANIA HAS A GOOD RECORD OF PROTECTING THE RIGHTS OF ITS HANDICAPPED CITIZENS AND OF PROVIDING SPECIAL EDUCATION SERVICES.

HOWEVER, WHEN CONGRESS DRAFTED P.L. 94-142, IT DID NOT EXAMINE CAREFULLY EXISTING STATE PROGRAMS AND PROCEDURES. AS A RESULT, PENNSYLVANIA (AND OTHER

STATES WHICH HAVE TAKEN LEADERSHIP ROLES IN THIS EFFORT TO PREVENT FURTHER INJUSTICE TO OUR HANDICAPPED CITIZENS) FACES A SERIOUS--INDEED, ALMOST INSUPERABLE--PROBLEM COORDINATING THE NEW FEDERAL MANDATES WITH OUR PREVIOUSLY DEVELOPED SYSTEM.

WE DO NOT CHALLENGE P.L. 94-142'S GOAL OF PROVIDING FULL EDUCATIONAL SERVICES TO THE HANDICAPPED; NOR DO WE QUESTION THE GRANTING OF PROCEDURAL PROTECTIONS TO HANDICAPPED STUDENTS AND THEIR PARENTS. BUT I FEEL COMPELLED TO EXPRESS MY CONVICTION THAT IMPLEMENTATION OF THIS ACT AND THE REGULATIONS PROPOSED BY HEW (HEALTH, EDUCATION AND WELFARE) WILL NOT RESULT IN SIGNIFICANTLY BETTER LEGAL PROTECTIONS OR EDUCATIONAL SERVICES FOR THE HANDICAPPED IN PENNSYLVANIA. IMPLEMENTATION WILL BE COSTLY, CONFUSING AND TIME-CONSUMING FOR ALL STATES, BUT PARTICULARLY FOR PENNSYLVANIA. P.L. 94-142 AND ITS ATTENDANT REGULATIONS HAS THE EFFECT OF SUPERIMPOSING AN ADDITIONAL FEDERAL FRAMEWORK OF PROGRAMMATIC REQUIREMENTS AND LEGAL PROCEDURES ON A PREVIOUSLY-EXISTING STRUCTURE--A GOOD STRUCTURE--ONE WITH WHICH PENNSYLVANIA SCHOOL ADMINISTRATORS, TEACHERS AND PARENTS ARE IN GENERAL BOTH FAMILIAR AND COMFORTABLE. WE IN PENNSYLVANIA HAVE BUILT THIS STRUCTURE WITH GREAT EFFORT AND AT GREAT EXPENSE. AS IS FREQUENTLY THE CASE, A LAW HAS BEEN PASSED AND REGULATIONS PREPARED TO ADDRESS--AND REDRESS--THE FAILINGS OF SOME STATES. THOSE WHICH HAVE PROVIDED LEADERSHIP, SUCH AS MY STATE, ARE PENALIZED INEVITABLY AND UNFAIRLY BY THIS "LOWEST-COMMON DENOMINATOR" APPROACH TO DEVELOPING NATIONAL POLICY.

IT SHOULD BE NOTED THAT CERTAIN ASPECTS OF P.L. 94-142 AND THE PROPOSED REGULATIONS CONTRADICT ELEMENTS OF THE P.A.R.C. CONSENT DECREE. THAT IS, PENNSYLVANIA IS CAUGHT BETWEEN A FEDERAL COURT ORDER AND NEW REQUIREMENTS FROM THE FEDERAL LEGISLATIVE AND EXECUTIVE BRANCHES.

AS YOU KNOW WE WERE UNDER A 1972 COURT ORDER TO SERVE ALL MENTALLY RETARDED CHILDREN. PURSUANT TO THAT ORDER WE HAVE IN PLACE A SOPHISTICATED DUE PROCESS PROCEDURE WHICH HAS BEEN EXTENDED TO ALL EXCEPTIONAL CHILDREN.

WE HAD PLANNED TO FIT P.L. 94-142 REQUIREMENTS INTO THAT SYSTEM. WE FEEL THAT OUR SYSTEM MEETS THE REQUIREMENTS OF THE ACT. BEH (BUREAU FOR THE EDUCATION OF THE HANDICAPPED) FEELS THAT IT DOES NOT AND THAT A COMPLETELY SEPARATE SYSTEM NEEDS TO BE DEVELOPED FOR CHILDREN NOT COVERED BY THE CONSENT DECREE. I CANNOT EMPHASIZE ENOUGH THAT SERIOUS FISCAL AND ADMINISTRATIVE PROBLEMS WILL RESULT IF WE CANNOT INCORPORATE P.L. 94-142 PORCEDURES INTO OUR PRESENT ELABORATE SYSTEM.

LET ME ILLUSTRATE THIS SITUATION BY DISCUSSING THE INCOMPATIBILITY OF OUR STATE'S CURRENT POLICIES CONCERNING THE PROGRAM PLACEMENT CONFERENCE AND THE INTERPRETATION BY BEH OF P.L. 94-142'S PROPOSED REGULATIONS.

IN PENNSYLVANIA, WE MAKE CONSIDERABLE EFFORTS TO INVOLVE PARENTS IN THE DEVELOPMENT OF THE IEP (INDIVIDUALIZED EDUCATIONAL PROGRAM). WE HAD PLANNED TO INTEGRATE THE PROCEDURAL REQUIREMENTS OF STATE AND FEDERAL LAW (I.E., P.L. 94-142) BY REQUIRING LEA'S (LOCAL EDUCATIONAL AGENCIES) TO SEND A LETTER TO THE PARENTS OF HANDICAPPED CHILDREN EXPLAINING THEIR DUE PROCESS RIGHTS AND SETTING FORTH A PROPOSED IEP. ANY CHANGE IN EDUCATION ASSIGNMENT WOULD BE BASED ON THE PROPOSED IEP. THE PARENTS WOULD HAVE AN OPPORTUNITY TO STUDY THE PROPOSED IEP AND ASSIGNMENT BEFORE MEETING WITH SCHOOL OFFICIALS. THEY WOULD HAVE THE OPPORTUNITY TO SEEK INDEPENDENT ADVICE BEFORE MEETING WITH THE SCHOOL OFFICIALS IN THE IEP PROGRAM PLACEMENT CONFERENCE. THEY WOULD HAVE THE RIGHT TO AGREE WITH THE PROPOSED IEP OR REQUEST A CONFERENCE AND FORMAL HEARING. THIS SEQUENCE WHICH WOULD INTEGRATE THE IEP PROCEDURES OF P.L. 94-142 WITH OUR EXISTING STATE SYSTEM WOULD HELP TO KEEP EXPENSIVE, TIME-CONSUMING CONFERENCES TO A MINIMUM. I WOULD REMIND THE DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE THAT EVERY DOLLAR SPENT ON ADMINISTERING PROCEDURAL REQUIREMENTS IN A PERIOD OF LOW GROWTH IN SPECIAL EDUCATIONAL FUNDING IS A DOLLAR TAKEN AWAY FROM DIRECT, PROGRAMMATIC SERVICES TO CHILDREN.

HOWEVER, WE HAVE BEEN ADVISED BY BEH THAT THIS SYSTEM IS UNACCEPTABLE. SPECIFICALLY, BEH TAKES EXCEPTION TO THE IDEA OF DEVELOPING EVEN A PROPOSED IEP WITHOUT DIRECT PARENTAL INVOLVEMENT AND TO THE INCLUSION OF A FORM BY WHICH PARENTS MAY WAIVE THEIR RIGHT TO A CONFERENCE TO DISCUSS THE PROPOSED IEP.

THE PROBLEM OF COORDINATING NEW FEDERAL REQUIREMENTS WITH THOSE OF THE STATE IS COMPOUNDED BY THE ILL-TIMING OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE'S REGULATIONS INTENDED TO IMPLEMENT P.L. 94-142. THESE REGULATIONS HAVE NOT BEEN ADOPTED YET. NONETHELESS, WE HAVE BEEN FORCED TO DEVELOP OUR STATE PLAN ON THE ASSUMPTION THAT THE PROPOSED REGULATIONS HAD THE FORCE OF LAW.

AGAIN, PERMIT ME TO LIST JUST ONE EXAMPLE OF HOW THE POOR TIMING OF THE IMPLEMENTATION OF P.L. 94-142 WILL AFFECT OUR STATE:

BEH IS REQUIRING THAT AN IEP BE DEVELOPED BY OCTOBER 1, 1977, FOR EACH CHILD WHO IS TO BE COUNTED FOR THE ENTITLEMENT FORMULA. THIS IS AN UNREASONABLY SHORT PERIOD IN WHICH TO GENERATE THE REQUIRED IEP'S. ADDITIONALLY, THE OCTOBER 1 DATE IS NOT REQUIRED BY THE ACT: AS IS ALL-TOO-OFTEN THE CASE, REGULATIONS SEEM TO HAVE GONE CONSIDERABLY FARTHER THAN THE REQUIREMENTS OF THE ACT, AN ACT WHICH IS ITSELF OF UNPRECEDENTED SPECIFICITY.

UNDER THE ACT, WE ARE MANDATED TO IDENTIFY, LOCATE AND EVALUATE ALL HANDICAPPED CHILDREN IN THE COMMONWEALTH AND TO ESTABLISH PRIORITIES FOR PROVIDING A FREE APPROPRIATE PUBLIC EDUCATION FOR THOSE CHILDREN. THE STATE EDUCATION AGENCY (SEA) SHOULD BE ALLOWED TO COUNT ANY CHILDREN WHO HAVE BEEN IDENTIFIED. PENNSYLVANIA NOW PROVIDES SPECIAL EDUCATION AND SERVICES TO OVER 200,000 CHILDREN. UNDER THE HEW PROPOSAL WE WOULD NOT BE ABLE TO COUNT THESE CHILDREN FOR FUNDING PURPOSES UNLESS AN IEP HAS BEEN DEVELOPED FOR EACH ONE. IT IS NOT REASONABLE TO REQUIRE THAT AN IEP BE DEVELOPED IN THE FIRST MONTH OF THE NEXT SCHOOL YEAR. IF IEP'S ARE HASTILY DEVELOPED FOR CHILD COUNT PURPOSES THEY WILL NOT BE THE KIND OF EDUCATION TOOL THAT CONGRESS INTENDED.

A MORE REASONABLE INTERPRETATION OF THE ACT IS THAT THE IEP MUST BE DEVELOPED BY SEPTEMBER 1, 1978. ON THAT DATE THE SEA IS REQUIRED TO ASSURE THAT ALL HANDICAPPED CHILDREN AGED 3 THROUGH 18 ARE RECEIVING A FREE APPROPRIATE PUBLIC EDUCATION. BY SEPTEMBER, 1978, THE STATE AND LOCAL EDUCATION AGENCIES WILL HAVE HAD TIME TO DEVELOP IEP'S FOR EVERY HANDICAPPED CHILD AND CAN MAKE ASSURANCES BASED ON THE IEP'S.

OUR EFFORTS TO PROVIDE HIGH QUALITY SPECIAL EDUCATION SERVICES AND TO IMPLEMENT P.L. 94-142 ARE FURTHER FRUSTRATED BY OUR INABILITY TO GET TIMELY AND REASONABLE ASSISTANCE FROM THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE.

PERMIT ME TO LIST SOME OF THE SPECIFIC PROVISIONS OF P.L. 94-142 AND/OR ITS PROPOSED REGULATIONS WHICH I REGARD AS POSING MAJOR OBSTACLES FOR THE COMMONWEALTH OF PENNSYLVANIA:

1. A DEFINITION OF "RELATED SERVICES" WHICH IS BROADER THAN THE STATE LAW AND WHICH WILL PROVE EXPENSIVE AND DIFFICULT IN ITS IMPLEMENTATION.

2. A REQUIREMENT FOR PARENTAL CONSENT PRIOR TO THE EVALUATION OF A STUDENT WHICH WILL ADD ANOTHER LAYER OF "DUE PROCESS" HEARINGS AND DELAY SERVICE TO CHILDREN.

3. AN ASSIGNMENT OF RESPONSIBILITY FOR ALL SPECIAL EDUCATION PROGRAMS TO THE SEA (STATE EDUCATION AGENCY) EVEN THOUGH PENNSYLVANIA LAW ASSIGNS CERTAIN SPECIAL EDUCATION AND RELATED SERVICE RESPONSIBILITIES TO AGENCIES OTHER THAN THE SEA.

4. FUNDING AUTHORIZATION LEVELS WHICH ARE GROSSLY INADEQUATE PARTICULARLY AS THEY PERTAIN TO "START-UP COSTS."

*****

THESE ARE BY NO MEANS ALL OF OUR CONCERNS ABOUT P.L. 94-142 AND THE PROPOSED BEH REGULATIONS. AND EXTENSIVE APPENDIX WHICH CONTAINS ADDITIONAL ANALYSIS ACCOMPANIES THIS TESTIMONY.

WHILE MY COMMENTS TODAY HAVE BEEN CRITICAL, I WANT TO REITERATE MY OWN PERSONAL COMMITMENT AND THE COMMITMENT OF THE COMMONWEALTH OF PENNSYLVANIA TO EDUCATING HANDICAPPED PEOPLE AND PROVIDING THEM WITH PROCEDURAL PROTECTIONS. WE IN PENNSYLVANIA DO NOT SIMPLY ACCEPT THE BROAD GOALS OF P.L. 94-142, WE APPLAUD CONGRESS' MOTIVATION IN ADDRESSING THIS IMPORTANT HUMAN QUESTION. WE AGREE WHOLEHEARTEDLY WITH THE NOTION THAT THE WORTH OF A SOCIETY MUST BE JUDGED IN PART BY THE WAY IT TREATS THOSE LEAST ABLE TO PROTECT THEMSELVES. IT IS SIMPLY OUR CONTENTION--OUR PROUD CONTENTION--THAT PENNSYLVANIA HAS DEMONSTRATED A COMMITMENT TO THE EDUCATION OF ALL HANDICAPPED CHILDREN. THE FEDERAL GOVERNMENT SHOULD RECOGNIZE THAT PENNSYLVANIA HAS A SYSTEM WHICH MEETS THE BROAD PURPOSES AND GOALS OF P.L. 94-142. WE SHOULD NOT BE PENALIZED BY THE IMPOSITION OF AN ADDITIONAL SET OF REQUIREMENTS WHEN WE HAVE ALREADY FACED UP TO THESE HARD ISSUES WHEN MANY OTHER STATES WERE DOING VERY LITTLE OR NOTHING FOR HANDICAPPED CHILDREN.

PLANNING TIME: SUMMARY
PRESCHOOL INDIVIDUALIZED EDUCATION PROGRAM PLANS

This report is based on data gathered during the preschool Individualized Education Program (IEP) pilot which was conducted in all of Pennsylvania's Intermediate Units (IUs) during the 1976-77 school year. IEPs were selected according to criteria described under Procedures to emphasize three key planning roles - parents, teachers, and IU representatives. Because of this selection, Tables 1 and 2 represent only some of the IEPs developed in preschool programs.

Time, a measure of input to IEP planning, is the topic of this report. Detailed reports of the outcomes of IEP planning, emphasizing characteristics of the plans developed during Pennsylvania's Preschool Pilot IEP, will be available shortly.

Purpose

This report is intended to help administrators estimate the amount of time it will take to plan Individualized Education Programs (IEPs). Information about planning time that has been invested by teachers and by other educators should be useful for planning staff allocations and budgets.

The statewide report (Table 1) is presented for general reference and for use by planners of statewide services. Intermediate Unit summaries (Tables 2 and 3) are included for use by school district and IU planners. For planning preschool staff allocations and budgets, the IU reports should be directly relevant. However, projections may require adjustment if the IU expects appreciable changes in the child population, service delivery model, experience of staff, or other important areas. Using this preschool information for estimating staffing needs at school age would require that administrators anticipate possible differences from preschool. For example, the availability of extensive information about older students may reduce the time needed for individual assessment and evaluation, while greater complexity of school-age curricula and service delivery might increase the time needed for conferences and other IEP planning activities. Consultation with preschool staff, who can interpret the IU report in light of local conditions and procedures, is recommended.

Procedures

During the 1976-77 school year, every intermediate unit (IU) developed written IEP plans for preschool handicapped children. Each child's IEP plan was summarized on a standard form (DEBE-2235-OT), a sample of which is attached. This summary included documentation of how key planners [parent(s), teacher(s), LEA representative(s)] participated in each of the five IEP components [assessing present levels, setting goals/objectives, recommending programs/services, estimating duration of services, and specifying evaluation of progress] that are specified in P.L. 94-142. The standard form provided space for signature indicating involvement by each key planner and space for recording the date of plan acceptance by that person. IEP planning time was reported according to these definitions:

> Data collection: Time entailed in collecting data for IEP (i.e., testing, obtaining records, observation, time in diagnostic classroom, parent interviews, determining present level).
>
> IEP development: Time entailed in drafting and agreeing on an IEP (i.e., time spent in staffing, writing goals and objectives, drafting forms, and attending required meetings).

When these IEP data were collected from the IUs, IEP plans were in various stages of development. For this report of planning time, documented completion of the IEP planning process was required. Therefore, IEPs which met both of the following criteria were considered completed and were selected for summary in Tables 1 and 2.

1. Signature of the IEP summary form was assumed to indicate that planning was completed to the satisfaction of the planner. In order to assure that the planning process had been completed, only IEPs signed by all three key planners met this criterion for inclusion.
2. A record of planning time by any key planner was assumed to indicate that time records had been kept. Therefore, only IEPs specifying some planning time met this criterion for selection.

Table 3 summarizes planning time for all preschool IEP plans documented by the IU and provided to CONNECT staff, without consideration of signatures or whether any planning time was reported. This table will enable the IU to consider additional aspects of local IEP planning time without regard to the selection criteria that are described above. All planning time is reported in hours rounded to the nearest tenth.

Results

The selection process reduced the statewide total of 1633 IEPs to a sample of 1142. In two IUs all IEPs met both selection criteria, but in one IU no IEP had all three required signatures.

The statewide summary of selected data (Table 1) indicates that substantial proportions of IEP plans were accepted (signed) by key planners who did not report that they invested any time in the planning process. Among key planners, teachers and IU representatives most frequently reported time; time was reported for other planners more frequently than it was for parents. Two percent of IEPs reported no time for IEP development. This suggests that data were not always completely recorded, and that the most meaningful analyses can be made on IU reports by the IU staff who were involved in the preschool pilot and know the recording procedures that were used locally.

Examination of range and standard deviation reveals a great deal of variability in time reported for most planning roles. Reasons for this variability will be examined in later reports, but IU staff may already be able to consider local factors and decisions as they interpret Tables 2 and 3. The data reflected in the statewide summary are not normally distributed; instead the distributions show many reports of little planning time (notice the mode) and relatively few reports at high levels of planning time. Because of these non-normal distributions, the mean is not considered the best measure of the average. Instead, the median seems the best statistic for use in general planning. According to the median total planning hours, planners for these selected preschool IEPs reported, on the average, ten and a half hours to evaluate the child and develop the IEP. Because parents are not paid, the median IEP cost nine and a half hours at the pay rates of the various professionals involved. Insofar as these data may be relevant to school age, where individual evaluation has long been part of the program, estimates of the additional time that will be needed to formalize an IEP plan can be based on median development hours which, after deducting the non-paid parent time, is approximately four hours.

It is recommended that IU staff interpret Tables 2 and 3 by deciding appropriate statistics for local data, considering local conditions and expectations, adjusting expectations accordingly, and making projections based on student population and local salaries.

Statistics reported in Tables 1-3 are defined as follows:

Percent of IEPs Reporting Time: This column reflects the degree to which persons who signed the IEP summary sheet also reported time spent in planning the IEP.

Mean: This column represents the arithmetic average (sum of time divided by number of planners).

Standard Deviation: This column reflects the deviation of time reports from the mean. Higher figures indicate greater variations in planning time.

Median: This column shows the planning time below which one half of the reports fall and above which one half of the points fall; the median represents planning time by the planner who was exactly halfway between lowest and highest.

Mode: This column shows the approximate planning time reported most frequently; most planners spent about this much time.

Range: The final column shows the lowest (least) and highest (most) planning time reported.

Comments and questions about this report are welcome. Address your inquiries to:

Fred Davis, CONNECT, 1-A North Progress Avenue, Harrisburg, PA 17109 Phone: 717-783-3238.

Source: CONNECT
6/17/77

TABLE I

PRESCHOOL IEP PLANNING TIME:
STATEWIDE SELECTED DATA

N = 1142

Planner Role	Percent of IEPs Reporting Time	Mean	Standard Deviation	Median	Mode	Range Least	Range Most
		DATA COLLECTION HOURS					
Parents	51	0.9	3.6	0.5	0.0	0.0 -	87.5
Teachers	95	7.8	15.3	3.0	1.0	0.0 -	99.0
IU Representatives	55	0.7	1.1	0.3	0.0	0.0 -	10.0
TOTAL Key Collectors	98	9.4	16.7	4.0	1.0	0.0 -	180.0
OTHER COLLECTORS	70	4.8	14.4	1.5	0.0	0.0 -	119.0
ALL DATA COLLECTORS	100	14.1	29.1	5.5	3.0	0.0 -	270.5
		DEVELOPMENT HOURS					
Parents	66	0.7	1.6	0.5	0.0	0.0 -	45.0
Teachers	81	3.1	4.3	2.0	0.0	0.0 -	45.0
IU Representatives	83	0.9	1.0	0.7	1.0	0.0 -	8.0
TOTAL Key Developers	98	4.8	5.2	3.5	2.0	0.0 -	49.5
OTHER DEVELOPERS	68	1.8	2.9	1.0	0.0	0.0 -	36.0
ALL DEVELOPERS	98	6.6	6.6	4.5	3.0	0.0 -	54.0
		*TOTAL PLANNING HOURS**					
Parents	71	1.7	4.7	1.0	0.0	0.0 -	120.0
Teachers	96	10.9	17.5	6.0	1.0	0.0 -	129.0
IU Representatives	87	1.6	1.8	1.0	1.0	0.0 -	13.0
TOTAL Key Planners	100	14.2	20.0	8.0	2.0	0.2 -	186.5
OTHER PLANNERS	73	6.[illegible]	15.2	2.5	0.0	0.0 -	124.5
ALL PLANNERS	100	20.7	31.7	10.5	6.0	0.5 -	278.5

**Collection plus Development*

PRESCHOOL PILOT IEP

I hereby affirm that I have been actively involved in the development of the following aspects* of the Individualized Educational Program (IEP) for

______________________________.
(Child's Name)

DOB: ___/___/___
Mo. Day Yr.

PARENT/ GUARDIAN	TEACHER/ PROGRAM IMPLEMENTOR	CASE MANAGER/ SUPERVISOR	
			A. Determining present levels of educational performance
			B. Determining annual goals and short term instructional objectives
			C. Recommending educational services and extent of regular educational class programming
			D. Determining initiation and duration of program services
			E. Determining evaluation procedures and review schedule

______________________________ DATE: ______________
PARENT/GUARDIAN:

______________________________ DATE: ______________
TEACHER:

______________________________ DATE: ______________
CASE MANAGER:

______________________________ DATE: ______________
OTHER:

______________________________ DATE: ______________
OTHER:

* Items A through E reflect definitions of the term, individualized education program, as presented in "The Education for All Handicapped Children Act of 1975" P.L. 94-142.

DEBE-2235-OT (8/76)

Current IEP Date: ____________________ IEP Review Date: ____________________

CHILD'S NAME: ________________________________

BIRTHDATE: ___/___/___ (Mo. Day Yr.) AGE: ___Yrs.___ Mos.

PARENT/GUARDIAN: ________________________________

SCHOOL DISTRICT: ________________________________

ADDRESS: ________________________________

____

CURRENT ASSIGNMENT: ________________________________

IEP PLANNERS:

Name	Relationship To Child	PLANNING HOURS Data Collection	 IEP Development

TYPE AND EXTENT OF RECOMMENDED* EDUCATIONAL SERVICES:

Program/Service	PROJECTED DATES Initiation	 Termination	Contact Hours	Environment/ Extent Regular	Personnel	Instructional Objective Revision Schedule

*Components of the plan are subject to revision as they are outdated by the child's development.

Individualized Education Program and Due Process Procedures

Several problems are developing with respect to the required individualized education program. The problems are, in part, due to the interpretation of the administrative agency.

1. The Bureau of the Handicapped (BEH) has informally interpreted the act as mandating the development of the IEP by October 1, 1977 for each child who is to be counted for the entitlement formula. This is an unreasonable timeline to impose on state and local agencies and is not mandated by the Act. It would be more consistent to require the development of the IEP by September 1, 1978. On that date the SEA is required to assure that all handicapped children aged 3 through 18 are receiving a free appropriate education. By September 1, 1978, the SEA and the LEA's can make assurances based on the IEP. This would also provide the SEA and LEA's sufficient time to develop quality IEP's. The Committee should scrutinize the Act and clarify this situation. The Committee should also scrutinize the final regulations when they are sent to the Congress as required by 20 USCA 1232(d)(1)(1976).

2. Another problem is that the method of meeting the IEP conference is not acceptable to BEH based on their analysis of the requirements of the Act. The Department had planned to integrate the procedural requirements of state and federal law and the IEP requirements by mailing a proposed IEP with a letter to the parents explaining their due process rights. Since the Department has had a program placement conference in place for two years (22 Pa. Code, Sec. 13.1 et seq.) it was planned that persons required by P.L. 94-142 would be included in that conference. The Bureau of Education for the Handicapped has specifically objected to these plans. The Bureau has specifically objected to the development of a proposed IEP without the parents' imput. It has also objected to procedures which would give the parent the right to accept the IEP as proposed or request a conference and formal hearing.

   The purpose of P.L. 94-142 was to afford procedural safeguards to parents and children. The required procedures of the statute are already substantively in place in Pennsylvania. The method we have developed meets the requirements of the Act and can be incorporated into our established system. Our system evolved from a 1972 consent decree to serve all mentally retarded children. BEH, however, has indicated that a completely separate system needs to be developed for children who are not covered by the consent decree. Attached is a chart which compares the requirements of the proposed regulations pursuant to P.L. 94-142 with the existing Pennsylvania system. It is clearly unreasonable for BEH to require two separate systems.

With respect to providing the procedural safeguards themselves, there are several problems. It is not clear from the statute when the right to a due process hearing vests. Section 615(b)(1)(E) provides that the established procedures include "an opportunity to present complaints with respect to any matter relating to the identification evaluation or educational placement of a child." Upon receipt of such a complaint the SEA or LEA must afford the parent an opportunity for a due process hearing. [Sec. 615 (b)(2)]

From this language it appears that a parent may have to challenge each step of the evaluation and be afforded due process protections at every juncture. It also appears that a parent may have the right to object to the child's placement and be afforded due process at any time. Limitations on due process rights need to be clarified. It would be more desirable to afford the parents due process protections with regard to the placement. At that hearing all the issues relating to evaluation could be heard since the placement is based, in part, on the evaluation. It is necessary that the number of hearings provided parents be expressly limited in the statute since hearings are expensive and time consuming. It is imperative that the law be amended to provide for flexibility in the Act for states which have already established due process procedures. It is also important to clarify the issues within the due process procedures because the child will remain in the inappropriate setting until the requirements are met.

The following amendment is suggested:

To amend Section 615(b) to read as follows:

> "(b)(1) The procedures required by this section shall include, [but shall not be limited to]

(A)...

(B)...

(C) Written prior notice to the parents or guardian of the child whenever such agency or unit

(i) proposed to initiate or change or

(ii) refuses to initiate or change, the [identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child,

(D)...

(E) an opportunity annually [to present complaints with respect to any matter relating to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education of such child] for an impartial hearing with respect to clause (C).

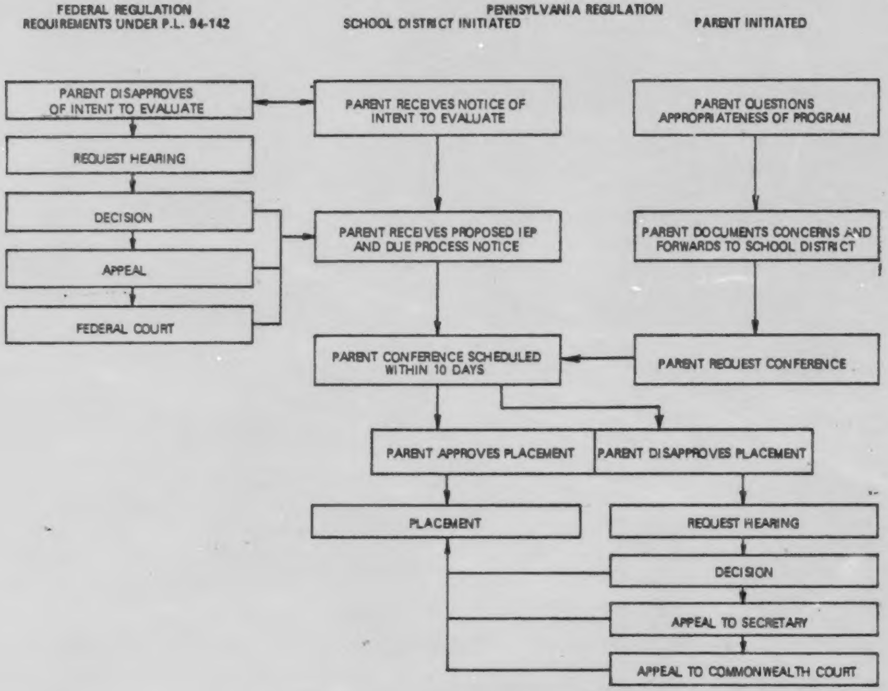
(2) [whenever a complaint has been received under paragraph (1) of this subsection,] The parents or guardian shall have an opportunity pursuant to clause E for an impartial due process hearing which shall be conducted by the state educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the state educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

There are two other issues within the due process provisions which need to be reconsidered.

The first is the provision which gives an aggrieved party direct access to federal courts. (Sec. 615(e))) It is not clear what legislative purpose is served by providing access to the federal courts. In Pennsylvania the right to appeal to the state court is established.

The other issue concerns section 615(b)(1)(B) which requires the assignment of a person to act as a parent surrogate for a child when the parents are unknown or unavailable or when a child is a ward of the state. The provisions raise serious problems. It appears that a surrogate parent would be legally liable for decisions made on behalf of that child. It is not clear whether a surrogate parent has the right to release the child's confidential records to outside persons.

DUE PROCESS PROCEDURES


FEDERAL REGULATION
REQUIREMENTS UNDER P.L. 94-142
PENNSYLVANIA REGULATION
SCHOOL DISTRICT INITIATED
PARENT INITIATED
PARENT DISAPPROVES OF INTENT TO EVALUATE
REQUEST HEARING
DECISION
APPEAL
FEDERAL COURT
PARENT RECEIVES NOTICE OF INTENT TO EVALUATE
PARENT RECEIVES PROPOSED IEP AND DUE PROCESS NOTICE
PARENT CONFERENCE SCHEDULED WITHIN 10 DAYS
PARENT QUESTIONS APPROPRIATENESS OF PROGRAM
PARENT DOCUMENTS CONCERNS AND FORWARDS TO SCHOOL DISTRICT
PARENT REQUEST CONFERENCE
PARENT APPROVES PLACEMENT
PARENT DISAPPROVES PLACEMENT
PLACEMENT
REQUEST HEARING
DECISION
APPEAL TO SECRETARY
APPEAL TO COMMONWEALTH COURT

Distribution of Funds to Local Education Agencies

In the past, Education of the Handicapped Part B funds were controlled by the SEA and distributed according to State plan. P.L. 94-142 changes this system and requires that a certain percentage of the funds be passed through to the LEAs based on an LEA plan which is approved by the SEA. Beginning in FY 1978, 50 percent of the funds must be passed through and in succeeding years 75 percent must be passed through.

The problem witn the new system is that it promotes inequity since the SEA does not have the discretion to allot the funds where they are needed. The SEA must instead distribute a flat amount to LEAs based on the number of children served. Section 614(e) of the Act requires that the LEA have full service to all handicapped children in the LEA before the SEA is authorized to divert 94-142 to other LEAs. Local Educational Agencies which have already identified and are serving significant percentages of school population will be eligible for a larger amount of funds than an LEA which has only begun to identify and serve handicapped children. Currently the Act mandates that an LEA is eligible for at least $7500. The effect of this is to provide the same level of assistance to wealthy school districts as to those with low tax bases.

The act should be amended to permit an SEA to determine the amount of funds which an LEA receives and which LEAs are eligible for funds based on criteria developed at the state level. The SEA should be permitted to channel money TO LEAs through its regular state funding system.

The following amendments are suggested:

1. To amend Section 611(b)(1)(B) to read as follows:

    (B) 50 percentum of such funds shall be distributed by each State [pursuant to subsection (d)] to local education agencies and intermediate units in the State which meets requirements as the state may establish to carry out the purposes of this act, for use in accordance with the priorities established under Section 612(3).

2. To amend Section 611(c)(1) B is amended to read as follows:

    (B) except as provided in paragraph (3), 75 percentum of such funds shall be distributed by such State [pursuant to subsection d] in accordance with a uniformly applicable formula] to local educational agencies and intermediate educational units in such State [for use in accordance with priorities established under §612(3)] which meet such requirements as the state may establish to carry out the purposes of this Act.

3. To amend by striking from the act:

a) Section 612(d)
b) Section 613(a)(9)
c) Section 614

"Priority" Children and Age Ranges

Section 612(3) of the act requires the state to establish priorities for serving children. Priority of service must be given to children who are not receiving an education and then to children within each disability who have the most severe handicaps. Section 613(2) requires the State to establish a goal of providing full educational opportunity to all children (birth through age 21) and a timetable for establishing that goal.

In Pennsylvania there is a legal duty to provide education to all children aged six through twenty-one. There is no legal obligation for LEAs to provide education below six and no legal authority below three years and seven months. To supplant under ss612(1)(A) and 613(a)(9) the state is required, in effect, to establish as a goal service to handicapped children from birth through age five.

The following amendment is suggested.

To amend Section 612(1)(A) to read as follows:

(A) There is established

(1) a goal of providing full educational opportunity to all handicapped children at ages when education is provided to nonhandicapped children.

Related Services

To qualify for assistance under P.L. 94-142, the SEA is required to establish a policy which guarantees the right to a free appropriate public education to all handicapped children within certain timelines [Sec. 612(1)]. That education means special education and related services. [Sec. 602(18)]. These provisions create several problems.

One problem is the inclusion and definition of the term "Related services." The definition of related services [602(17)] includes services which have not traditionally been considered educational services. Consequently, some of the services are not under the control of the SEA, and the SEA has no authority to supervise services provided by other state agencies. It would be more appropriate to simply mandate "special education" since the SEA could provide services necessary for special education without undertaking the responsibility for other services which may not be educational services.

An example of the difficulties the SEA would have in administering "related services" is the medical services restriction. The definition of "related services" includes developmental corrective and other supportive services but limits medical services to diagnosis and evaluation. This provision will be difficult to administer since the distinction between diagnosis and treatment is not always clear. Physical therapy is specifically included in the definition of "related services." Yet physical therapy is considered medical treatment as it is prescribed by a physician.

Another problem which is created by the inclusion and definition of "related services" is that of equity. The Act mandates that "related services" be provided at no cost. [Sec. 602(18)(A)]. The inequity is that the definition includes non-educational services which are provided by other state agencies on a sliding scale cost basis. An example of such services is psycho-therapeutic counseling which is provided by our Department of Welfare. It is not clear how the services can be provided free to some children while others must pay.

These problems would be alleviated if the term "related services" was restricted in the Act. The definition of "special education" [Sec. 602(16)] is adequate because it includes educational services which the SEA has the authority to control and finance. It is also adequate because the quality of special education is assured because section 612(6) provides in part that the SEA have educational standards.

It also provides that the SEA shall be responsible for all the educational programs throughout the state including programs administered by other state or local agencies. This provision is not reasonable because the SEA would be responsible for non-educational services. This broad requirement conflects with Pennsylvania law. The Pennsylvania Department of Education is only authorized to provide counseling [22 Pa. Code § 7 - 6.61], [24 P.S. § 13-1374], phychological services [25 P.S. 13 - 1371], recreation (if recreation is physical education) [25 P.S. § 15-1511], and limited health services [25 P.S. 14-1401 et seq]. The Department is not authorized to provide audiology or physical and occupational therapy. Pennsylvania is willing to accept the responsibility for the delivery of some of the services included in the definition. However it is not reasonable to require the SEA to deliver federally defined related services. The SEA should only be required to deliver services which it is authorized by State law to deliver.

The following amendment is suggested:

To amend Section 612(6) to read as follows:

(6) The state education agency shall be responsible for assuring that the special education requirements of this part are carried out and that all educational programs for handicapped children within the state, including all such programs administered by any other state or local agency, will be under the general supervision of persons responsible for educational programs for handicapped children in the state educational agency and shall meet the standards of the state educational agency.

Comparability

Section 614(a)(2)(C) obligates the SEA to obtain assurances from the LEA's that P.L. 94-142 funds are being used to provide services in program areas which are generally comparable to services which are not receiving funds under 94-142. The comparability requirement of the Act is identical to the comparability requirement under Title I of The Elementary and Secondary Education Act of 1965, as amended, except that the term "program areas" is used instead of "project areas." The meaning of comparability in Title I is also unclear. There are at least three issues which need to be resolved by the Congress:

1. The meaning of "program areas" is not clear since it could mean the broad category of programs such as preschool, vo-ed, or could mean the categories of handicapping conditions.
2. What is to be compared is also unclear in the Act. It would be possible to compare delivery systems on any number of variables, for example, equitable availability in geographic areas or availability of programs for handicapped children with a particular disability
3. Once the above is determined, it is not clear how the differences are to be evaluated.

Funding Formula

The funding formula needs to be reexamined. The formula beginning with fiscal year 1978 will be based on the number of handicapped children receiving special education and related services in the state multiplied by a percentage of the average per-pupil expenditure in the elementary and secondary schools in the state. The percentage begins at 5 percent for FY 1978, increases to 10 percent for FY 1979, 20 percent for FY 1980, 30 percent for FY 1981, and 40 percent for FY 1982. The money provided is inadequate. In FY 1978, the state will receive only 5 percent of the national average per pupil expenditure or approximately $70 per child. Whereas in FY 76 Pennsylvania spent $1047 per handicapped child.

One problem is that the formula does not take into account the start up costs which naturally result from the new programs or services, inservice requirements and new administrative costs. The requirements of the act for each child must be met by October 1, 178, yet the funds support those requirements is provided at an escalating amount. For example to qualify for 94-142 assistance, the SEA is required to assure a free appropriate public education is available to all handicapped children between the ages of three and eighteen within the State by September 1, 1978. Yet the funds to support that education is only at a 5 percent of the average per pupil expenditure. The percentage rises over a five year period. Since the law requires immediate implementation of expensive administrative procedures there is no rationale for a phase in of federal support. Accordingly, the statute should be amended to authorize federal support at 40 percent for each year the Act is to be effective.

The following amendment is suggested:

To amend Section 611(a)(1)(B) is hereby stricken and the following language inserted in lieu thereof:

> (B) 40 percentum for the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982 of the average per pupil expenditure in the public elementary and secondary schools in the United States, except that no state shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
HARRISBURG, PENNSYLVANIA 17126

CARYL M. KLINE
SECRETARY

AREA CODE 717
787-5820

August 5, 1977

Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

I am writing in response to the specific questions on my testimony of June 21, 1977 which you asked in your letter of June 30, 1977. I am happy to be afforded the opportunity to describe the issues more fully.

1. Can you expand on exactly how P.L. 94-142 contradicts the Pennsylvania Association of Retarded Citizens' consent decree? Please document.

   Public Law 94-142 and the PARC decree are contradictory in three areas. Under the PARC decree evaluation and placement issues are raised in a single hearing. [Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 343 F Supp. 279, 303-304 (E.D. Pa. 1972), 22 Pa. Code, Sec. 1361] Under the PARC decree the parents are notified of any proposed change in the educational placement of their child. The notice must include any tests or reports which support the change. The notice informs the parents of their right to raise any issues of evaluation and placement at a hearing. Under P.L. 94-142 different procedures are required. Section 615(b)(1)(E) provides that parents be afforded separate hearings on any matter relating to the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to such child.

The second area of conflict is the frequency of hearings. Under the PARC decree at paragraph (j) a child must be educationally evaluated every two years or annually if requested by a parent. [343 F. Supp. 303, 22 Pa. Code 13.61(e)]. Hearings are offered whenever a change of placement is recommended or when no change in placement is recommended after an evaluation. Under sections 615(b)(1)(E) and 615 (B)(2) of P.L. 94-142, however, the opportunity for a hearing must be afforded upon receipt of a complaint from a parent. There is no limit on the number of times a complaint may be filed on behalf of the same child in the same program.

The third area of conflict is parental consent. Under the PARC decree it is not necessary to obtain parental consent before evaluation. School districts are required under state law to evaluate children [id. and 24 P.S. Sec. 13-1371(2)]. Section 615 (b)(1)(C) of P.L. 94-142 has been construed by HEW to require parental consent for evaluation. The statutory language only requires notice before evaluation but Section 121a. 404 (b) of the proposed regulations (41 FR 56965) requires that parental consent be obtained before evaluation. To postpone evaluation until parental consent could be obtained would be contrary to the PARC decree and state law which mandates evaluation.

*2. By sending out a proposed individualized education plan and a waiver of rights, your educational system appears to eliminate parent involvement in the development of the plan. As you know, the intent of P.L. 94-142 is to encourage parent involvement. Even though you state that the parent would be involved, doesn't your proposed system in fact discourage parent involvement? Have you had experience with this yet? What proportion of parents waive their rights?

The system we are developing encourages parental involvement. The parents are given very early notice of the kinds of educational plans the school is proposing. This encourages parental involvement since the parents have an opportunity to study the proposed IEP. The parents will also have time to solicit outside opinions on the IEP and will be able to raise thoughtful questions at the conference. The parent will be able to more fully participate at the conference given this lead time. This system appears to be more desirable than meeting with parents who may not have considered the potential and needs of their child and the variety of services available from the school.

We have had experience in sending out proposed plans to parents. Under the PARC decree we are required to notify the parents of a recommended program and placement. The parent may take issue with the recommended program by notifying the school at the program placement conference and eventaully be afforded a hearing on the change. We feel that our system is quite effective. Usually the parents discuss the recommended plans at a conference. If the parent is not satisfied with the recommended plans they are then notified of their right to a hearing. Since 1972, 270 due process hearings have resulted from 210,167 placements of children. Since the Department of Education does not require school districts to submit data on whether the parents accepted the program with or without a conference, I cannot supply exact figures.

In addition we will be providing funds for parent education. Under our plan an Intermediate Unit or school district may apply for funds for parent inservicing. We are also conducting a public television and newspaper education system to encourage parent participation in IEP development.

3. What other agencies have responsibilities in Pennsylvania?

- for what children and what ages?
- for what services and what is the extent of the public responsibility and the public cost?

The Department of Education is responsible for the the education and training of school aged children. School aged children are persons aged six to twenty-one and persons younger than six who are of the age which regular education programs are provided in their school district of residence. [Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania 343 F. Supp. 279, 302, 303, (E.D. Pa. 1972), 22 Pa. Code Sec. 11.12]. The Department of Education is responsible for residential placements of school aged children who are placed in approved private schools for purposes of providing an appropriate educational program. The Department of Education is also responsible for the education and training of certain children below school age in approved private schools. This responsibility is limited by statute [24 P.S. Secs. 1376, 1377]. to those blind, deaf, severly brain damaged and cerebral palsied children who have received departmental approval to attend approved private schools. The state budget for special education for the Department of Education is more than $250,000,000. This represents the state allocation for costs in excess of educating a non-handicapped child and does not include local public monies.

The Department of Public Welfare is responsible for the residential placement of school aged children when the placement is made for other than educational reasons. Once the placement is made, however, the Department of Education is responsible for the educational program of those children. The Department of Public Welfare is also responsible for the education and training of certain children who are below school age as prescribed by the Mental Health and Mental Retardation Act of 1966 [50 P.S. 4101 et seq]. That act mandates several services and includes education and day care services for handicapped preschool children. The Department of Public Welfare is expending about $3 million to provide educational programs for below school age handicapped children.

The Department of Health is responsible for providing health services to school districts. The Department of Health expended $12,085,826.56 for the 74-75 school year. The Department of Health also operates one facility for school aged children which provides an educational program. Negotiations are currently underway to transfer the responsibility for the educational program of that facility to the Department of Education.

August 5, 1977

The Governor's Child Development Committee is responsible for the education and training of children in Headstart Day Care programs which are designed for economically and culturally deprived children. The program is mandated to include 10 percent handicapped children. The total budget for the federally funded program is $12,674,009. Approximately $513,000 of that amount is used to provide services for the 991 handicapped children in the program.

There are also private agencies and schools which are licensed by the Department of Public Welfare and which use public and/or private funds. The Department of Education does not have authority over those programs which are funded by other public or private agencies. Private agencies include organizations like the Easter Seal Society and United Cerebral Palsy Association.

4. It was my understanding that under PARC the State Department of Education and the State Department of Welfare worked out an agreement for assuring the education of all retarded citizens within the state? Is that correct? Why couldn't such an arrangement work for assuring that "general supervision" take place?

An agreement was worked out between the Department of Education and the Department of Public Welfare. The PARC decree applied to both departments and the agreement was developed pursuant to that decree. Section 612(6) of P.L. 94-142 requires the state educational agency to assume general supervisory powers over other state agencies. This provision does not mandate the other state agencies to defer to the state educational agency. Nor is there legal authority under Pennsylvania law for the Department of Education to assert such authority for preschool educational programs. The mandate of Section 612(6) is a problem at the preschool level only. The Department has no problem with assuring general supervisory authority over the educational programs for school age children.

5. You note that the definition of Related Services in P.L. 94-142 is broader than what is required in Pennsylvania. Could you be more explicit about what it includes and what the status of those services are in Pennsylvania. Where the definition is broader, does Pennsylvania not offer those services?

. The problem with the definition is that the statutory language is open ended. Section 4 provides in part:

> "(17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education . . ."

The Department of Education does provide the services specifically enumerated in the act. The Department of Education however does not provide all the services which would be mandated by the proposed regulations [41 FR 56965]. Our own interpretation of the act is that only the services specifically enumerated in the act are mandated. The Department of Health, Education and Welfare, however, has interpreted the language broadly and has expanded the definition in the above cited proposed regulations. Section 121a.4 of the proposed regulations requires school social work and parent counseling and training services. These are services that are not specifically mandated by P.L. 94-142.

Although school social work and parent counseling and training services are not delivered by the Department of Education they are delivered by Departments of Health and Public Welfare. These services can be delivered by school districts through referral. When the referral is for diagnostic purposes there will be no cost to parents.

Again, thank you for this opportunity to further discuss P.L. 94-142.

Sincerely,

Caryl M. Kline

Caryl M. Kline

Senator STAFFORD. Now the Chair will invite Dr. Frank Bowe for the American Coalition of Citizens with Disabilities.

Dr. Bowe, my apologies. Will you convey to Dr. Bowe the necessity for a very brief presentation, and that his full speech will be in the record as if delivered. We have to be out of here, now, in 13 minutes.

STATEMENT OF FRANK G. BOWE, PH. D., DIRECTOR, AMERICAN COALITION OF CITIZENS WITH DISABILITIES, ACCOMPANIED BY JUDITH HEUMANN, DEPUTY DIRECTOR, CENTER FOR INDEPENDENT LIVING, BERKELEY, CALIF.

Mr. BOWE. I am Dr. Frank Bowe, director of the American Coalition of Citizens with Disabilities, which is a group of 54 organizations of and for disabled people. Two of those organizations have already testified, the Children's Defense Fund, and the Council for Exceptional Children. They have my full endorsement.

Let me make two points, and then I will be joined by Miss Judy Heumann, who is deputy director for the Center for Independent Living in California.

My first point is that the proposed amendments that I have seen are confusing. They are confusing not only because I believe they are based on a central confusion about what the law says; but they are confusing in their own merit.

Second, I feel very strongly that Public Law 94–142 because it is not scheduled to be implemented until October 1. 1977, should not be changed at this point.

On the question of child count, as Mr. Weintraub pointed out, the formula should remain, it balances expensive against inexpensive services; it balances multiple disabled against unidisabled individuals, and it balances, in a very fair and readily understandable way the allocation of funds. The safeguards, particularly the right of parents to participate in the development of the individualized education plan should remain.

There are only a few months now before implementation begins; to change now will be to generate confusion, debate, delay, obfuscation. Let us go forward to do the job that years of careful thought have laid out before us. Let us move out of the Congress, out of the hearing room, and into the class rooms, into the schools. Let us do the job now. We can come back, after we have implemented this law, and we have experience and evidence on which to base changes. Changes can be made at that time when it can be ascertained that changes are in the best interest of the children.

Thank you very much, Miss Heumann, do you have anything to add?

Miss HEUMANN. I would just like to briefly state that I have comments here from the United Cerebral Club, the San Francisco affiliate, recommending no changes in Public Law 94–142; and Ed Roberts, State director of the Department of Rehabilitation likewise presented such a statement. He wanted to go on record as stating that one of the big problems that the Department of Rehabilitation, in California has is persons coming out of school inadequately educated, or persons who have never been through the school system. So, there is obviously need for Public Law 94–142 to be implemented, and strongly.

Senator **Stafford**. Thank you very much; any statements in full that you wish to make, you may have included in the record. We will hold the record open so that the statements can be placed in the record in full.

I especially thank both the witnesses for your cooperation in view of the time restraints placed on us this morning.

Mr. **Bowe**. Thank you, Mr. Chairman.

[The prepared statement of Mr. Bowe and additional material follow:]

Room 817, 1346 Connecticut Avenue, N.W. • (202) 785-4265
Washington, D.C. 20036

**American
Coalition of
Citizens with
Disabilities
Inc.**

"PROBLEMS OF IMPLEMENTING P.L. 94-142"

Testimony of Frank G. Bowe, Ph.D.
Director
American Coalition of Citizens with Disabilities, Inc.
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036

before the Senate Subcommittee on the Handicapped June 21, 1977

I am Frank Bowe, Director of the American Coalition of Citizens with Disabilities, Inc. (ACCD). With me is Ms. Judith Heumann, resource person and Assistant Director of the Berkeley (CA) Center for Independent Living. ACCD is a nationwide organization representing 54 local, state and national organizations of and for disabled people. Among our organizational members are t-e American Council of the Blind, Children's Defense Fund, Council for Exceptional Children, Epilepsy Foundation of America, National Association for Retarded Citizens, National Association of the Deaf, National Association of the Physically Handicapped, National Paraplegia Foundation, and United Cerebral Palsy Associations, all of which have a deep and direct interest in the education of handicapped children and youth. The Children's Defense Fund and the Council for Exceptional Children have already testified; their remarks have ACCD's full endorsement.

I would like to address my comments to the amendments just proposed by the consortium representing the Education Commission of the States, the National Governor's Conference, and three other associations. The central theme of my remarks will be that the proposed amendments emanate from confusion about the law's requirements and themselves generate confusion, and that P.L. 94-142, the

Education for All Handicapped Children Act, is not scheduled for implementation until October 1, 1977, the beginning of Fiscal Year 1978. Amendments, therefore, should be considered only after the States have completed substantial components of the long-range implementation plan and can demonstrate that changes would enhance the protection envisioned in the law. To change the requirements at this point, after several years of intensive and extensive public participation in the design of the statute and its regulations and before the States have had experience implementing the law's provisions, is to create unnecessary delay and confusion, and, most important, to dilute the protection offered handicapped children and youth by this landmark piece of legislation.

The proposed amendments are themselves confusing. The suggestion that the Federal level of support be increased is variously proposed for inauguration in FY '78 and FY '79. The second proposed change confuses percentage appropriations with child count procedures. The third suggestion confuses the number of disabilities a child has with the number of unduplicated services required, ignoring the fact that particular services may and frequently do meet several needs presented by an individual child. The fourth proposed amendment confuses general supervision and central agency responsibility. The fifth suggestion confuses direct involvement with existence of potential conflicts of interest, the right of private action with the right to appeal within the system, and agency placement authority with parental consent and impartial hearing decisions. Another proposed amendment would delete fiscal accountability procedures mandated in the law, yet the text of the consortium's argument provides no justification for this. It is one more example of confusion in their presentation. The last proposed amendment is perhaps the most serious distortion. Individualized education programs are mandated agreements for services: to weaken the mandate on the grounds that achievement may be held accountable is to confuse provision of services with achievement made through these services.

ACCD does not oppose increased funding but does object to removing Congressional appropriation authority on the basis of performance; the two issues are intertwined in the consortium's presentation but must be kept separate and apart. We do oppose efforts to eliminate requirements beyond those provided in the HEW Section 504 regulation and believe that these additional mandates may be met by revising rather than by merely adding to existing procedures, thus reducing anticipated expenditures. Finally, we oppose amendments to alleviate the burden on the States when available evidence indicates that the States are not presently doing all they could be doing with existing levels of support.

ACCD recommends that amendments affecting procedures for the States to follow be disapproved. P.L. 94-142 offers protection to children and youth. The integrity of this protection must not be compormised without powerful evidence, here lacking, that change would enhance that protection. The proposed amendments are unlikely to do so, are not grounded in experiential evidence, and are so confusing as to most probably generate unnecessary obfuscation in implementation. The law should be implemented with the procedures intact. Rather than amend the law, I would favor the issuance of direction from the Subcommittee to the Office of Education regarding the promulgation of potent regulations addressing the issue of compliance and enforcement in a comprehensive fashion and resolving procedural questions in a manner consistent with the law as it now stands. Thank you.

Room 817, 1346 Connecticut Avenue, N.W. • (202) [illegible]
Washington, D.C. [illegible]

American Coalition of Citizens with Disabilities Inc.

July 11, 1977

Received
7/14/77

The Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
Committee on Human Resources
United States Senate
Washington, D.C. 20570

Dear Senator Randolph:

Thank you for your letter of 30 June requesting ACCD's views on three specific questions relating to my testimony on implementation of P.L. 94-142. I am pleased to respond and wish to express once again my appreciation of the opportunity to testify before the Subcommittee.

1. On the "hold harmless" language: ACCD is firmly opposed to any such provision under the existing graduated formula which provides an increase in the Federal share from 5% in 1978-1979 to 40% in 1981-1982. It is our belief that such language would severely restrict the opportunities and diminish the rights of disabled children and youth until 1981-1982. An alternative which would remove the graduation and begin the 40% share in 1978-1979 would also obviate the need for a "hold harmless" provision. Accordingly, we oppose this recommendation.

2. Counting the children is the fairest, most uniform and most feasible way to determine allocations to the States under the existing formula. This has been demonstrated repeatedly in hearings before the Subcommittee. To count the services is to substitute unnecessarily vague and unaccountable criteria for the clear and firm ones now planned. To introduce such a change now is doubly dangerous: it serves to further obfuscate understanding about obligations and clarity about requirements in the States while necessitating additional planning time (and resources) on top of the considerable investment already made by the States.

The single State agency responsibility is crucial to end the historical run-around parents and children have often received. It is a feasible step and a reasonable one.

3. For the most part, States appear to be on schedule in their plans to implement P.L. 94-142. A few States lag behind. Confusion over constantly changing criteria exacerbate the situation seriously. The Office of Education should be expected to complete its regulations expeditiously and to maintain consistent and constant expectations for the States to meet.

With clear regulations, most, if not all, States will be ready for P.L. 94-142 by September, 1978.

Again, thank you for your interest in our views. ACCD remains willing to assist in the important work of the Subcommittee in every possible way.

Sincerely yours,

Frank G. Bowe

Frank G. Bowe, Ph.D.
Director

Center for Independent Living, Inc.
2539 TELEGRAPH AVENUE • BERKELEY, CALIFORNIA 94704 • (415) 841-4776

Received
7/1[illegible]/77

July 7, 1977

The Honorable Jennings Randolph
Subcommittee on Handicapped
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph;

In response to your June 30 letter on PL 94-142 I believe that amendments to this legislation should not be offered at this time. Until the law is in place with adequate time to appropriately review its effects amendments are premature.

I have experienced for too many years opposition from governors and state legislators to strongly implement and enforce the right to education for all handicapped children. PL 94-142 was not developed overnight. States had more than ample time to have input to this legislation.

Disabled individuals believe that PL 94-142 was the result of compromises. We would have wished a stronger piece of legislation but recognize that this is not possible now.

The testimony that I heard before the Subcommittee clearly showed that organizations run by and for disabled individuals do not believe that amendments are appropriate at this time.

My experience in California working with parents show that parents are still facing the same problems they have been plagued with for years. The children are not receiving appropriate services and parents are being harassed when they are trying to make changes in the system.

As a disabled individual, as a former teacher of disabled children and as the Deputy Director of Center for Independent Living which serves 3,000 disabled individuals I implore you Senator Randolph to stand firm and not permit any amendments at this time.

With best wishes.

Sincerely,

Judy Heumann
Judy Heumann

JH:jb

A Services, Training and Educational Organization of People with Disabilities

Senator STAFFORD. The Chair would like for Representative Elaine Bloom from Tallahassee, Fla., to take the witness stand.

Representative Bloom, we welcome you here. The Chair will only comment that you heard my previous request for expediting matters; and I will only say that Senators would do well to speak as quickly as the last two witnesses did.

Go ahead.

STATEMENT OF REPRESENTATIVE ELAINE BLOOM, STATE LEGISLATIVE COMMITTEE ON FEDERAL-STATE APPROPRIATIONS, TALLAHASSEE, FLA.

Mrs. BLOOM. Thank you, Senator.

As you well understand, I too face the same kind of time problem situation very frequently. I chair the Florida House of Representatives Committee on Federal State Appropriations, and because of the great amount of time we have spent on analyzing the impact of 94–142 on our State laws, pertaining to education, I am here today and very pleased to join with you in what I recognize to be a real partnership approach, intending to deal with the problems that we both face in implementing your concerns and ours.

We do, Senator, all represent the same constituents. The school districts that report to me are the same school districts that report to you. The children, the parents, the advocacy groups are the same people that you and I must deal with on a daily basis.

But we have some very significant problems. Let me say at the outset that the State of Florida is very proud of its track record in educating exceptional students, and we have been recognized as one of the leaders in the country in providing for the special needs of these children, and in recognizing the needs of all children.

I must take exception with the fact that our name was mentioned by inclusion as saying that those who are attempting to make changes in the particular law, are among those who are "detractors." On the contrary, Florida as a leader, and I personally, as a person who spent over a decade of public service as a full-time, unpaid volunteer with an organization that pioneered, as the chairman said earlier, private organizational involvement in handicapped education, feel that I did not change my concern for handicapped education when I was elected to public office; instead I found a new vehicle to assure that the concerns of handicapped education would be met appropriately at the State and local level.

We have a very significant constitutional conflict, Mr. Chairman because our State constitution does say very specifically that the supervision and control of educational problems is left with the local school districts, with the school boards, constitutionally elected officers. In a sense it is like saying that that government closest to the people is the best government for it; and parents and advocacy groups have assured me that they have the best possible input in the process by being able to speak directly to their local school boards in assuring the quality programs that they wish.

In addition we provide a very high level of financial support. In fact, the per capita expenditures of 94–142 in the State of Florida for the next fiscal year would amount to less than 3 percent of the total dollars that we spend on handicapped education. We are proud of this record. But we also found that in daring to ask certain questions, Senator, we were shocked to learn of the reaction of certain members of the Federal bureaucracy, that because we asked questions we would be specifically targeted for a refusal.

Now, Senator, I am sure you are very much aware of the fact that when a State is in substantial compliance with the broad goals and legislative intent of measures which this committee and your two Houses see fit to pass into law, certainly those States which are coming into their own in terms of providing that measure of service that you would like to see should be rewarded and encouraged. As Secretary of Education, Mrs. Kline, said earlier, we do not think we should be punished for being able to be a leader and a standard bearer in this area. That is why, sir, I took the time to come here, so that I could share with you some of the particular conflicts that we have with our State statutes and with our State constitution.

In the State statutes we are talking about, again, there is a minimum of conflict, but it does go to the heart of what you are attempting to do here. You are concerned about due process. Well, Senator, so are we. We have implemented a very significant and far-reaching administrative procedures act in the State of Florida, which guarantees due process and eliminates phantom government and gives every citizen the right to what they would require for their own needs.

This due process does not match up with the specific stringent requirements that were laid out in 94–142.

Because of the brevity of time, Senator, I would request that I be able to submit to you in writing some of the other particular problems that we have. But I would urge that you and your colleagues would take the opportunity now to amend this particular piece of legislation to assure that States that are in substantial compliance with your goal are rewarded for being in that form, and are not made to feel that they are barriers to providing the quality program that you would wish to provide for the people who need it.

I might also add that our commitment to handicapped education was thoroughly misunderstood by some of the advocacy groups in Florida, and that is another problem: the minute a State dares to question the Federal responsibility in a particular area, there are people that are so fearful of the fact that Federal dollars might be challenged—even though we are talking about a very minimum amount—that they beg us, "Please, do not make any waves."

Senator, I know you would agree with me that the American system would provide that you and I have an opportunity for an interchange in a public forum such as this, and I would hope, with respect, that you will therefore assure that States such as ours will be given every benefit of consideration in our application for these Federal funds.

Senator STAFFORD. Thank you very much for coming all the way up here to be with us. We appreciate your testimony. Without objection, the record will contain whatever material you wish to add to the remarks you made here this morning. I can assure you that all members of the Committee will give due regard to the written record, and additional statements which you may place within it.

There will be questions submitted to you in writing for your response.

Mrs. BLOOM. I appreciate that. Thank you very much.

[The prepared statement of Mrs. Bloom and additional documents follow:]

STATEMENT BY
REPRESENTATIVE ELAINE BLOOM, CHAIRPERSON
FEDERAL-STATE APPROPRIATIONS COMMITTEE
FLORIDA HOUSE OF REPRESENTATIVES
BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED
Tuesday, June 21, 1977

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you about the Education for All Handicapped Children Act of 1975. Providing the best education that we can for our handicapped children is an issue that concerns all of us and the involvement of state legislatures with you as you re-examine this law fortifies the partnership approach of state-federal relations necessary to benefit our mutual constituency. Personally, I have long supported Florida's handicapped education program, which is among the finest and most comprehensive in the nation, both as a full-time community volunteer with over a decade of active service in the pioneering organizations in these fields, and also through my actions in the Education and Appropriations Committees of the Florida House.

I commend you, Mr. Chairman, and members of the Subcommittee for the concern for the special needs of handicapped children that is manifested in this Act. I also wish to express my support for the concept of federal aid to programs for handicapped children. Although I do not intend to discuss money or funding levels by way of this testimony, we do believe that federal aid to help educate handicapped children is an appropriate use of our federal tax dollars. But we also believe that determining how the handicapped children in Florida are served is properly a state responsibility. Thus, I wish to address provisions in the

Education for All Handicapped Children Act that are incompatible with Florida's Constitution, laws, and policies; to talk about problems we have faced; and to ask you a question: Is your real goal to assure that states provide quality educational programs for all children, or to design a uniform, national delivery system for services to the handicapped at the federal level?

Some of the conflicts between the Education for All Handicapped Children Act and Florida's Constitution, laws, and administrative regulations are, we believe, worthy of your serious consideration, particularly because minor amendments may be all that are needed for their resolution.

The most obvious and serious conflict involves the due process requirements mandated by P.L. 94-142, and those authorized by Florida statute through the Administrative Procedures Act. Both procedures protect the rights of handicapped children and their parents, and both procedures afford due process through a system of appeals. But, P.L. 94-142 requires direct appeals to the state education agency from the school district. The Florida Administrative Procedures Act instead authorizes direct appeals from local school board decisions to the State Division of Administrative Hearings where the validity of a rule or procedure is questionable, wherein the decision of the administrative hearing officer is final. If a substantive right is affected, and the rules under which the LEA is operating are valid, an appeal may be made to a court of competent jurisdiction. We maintain that both of these procedures assure that due process requirements in protecting the rights of handicapped children and their parents will be met, and that therefore, P.L. 94-142 should recognize state laws which establish adequate due process requirements.

Another potential conflict may involve the supervision and control of educational programs for handicapped children. P.L. 94-142 requires "that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the state educational agency. . . ." If this involves directly "supervising" instruction for handicapped children in Florida public schools, then this provision may conflict in part with existing Florida Constitutional language. Article IX, Section 4(b) of the Florida Constitution assigns the supervision and control of public schools to the school boards in each local district. In other words, this is a policy decision, made by the people of the State of Florida in their Constitution, that the local school districts are best able to operate their public schools, and reflects their belief that locally-elected school boards are more responsive to uniquely local needs. Resolving this conflict may depend on the definition of "supervision" used by the Bureau of Education for the Handicapped in their final regulations to implement P.L. 94-142. Our State statutes direct the SEA to provide supervision to assure state standards are being met by LEAs. Isn't this part of that same general type of supervision, particularly because programs for the handicapped are described in statutory language?

There are other conflicts, as well, between P.L. 94-142 and state laws, regulations, and Constitutional provisions. But the significance of this Act lies in the fact that it implies that the federal government is somehow inherently better qualified to determine which program management and administrative procedures are best designed to insure that handicapped education programs throughout a given state are administered equitably. We believe that substantial compliance with the goals and intent of the federal legislation should be the criterion for state and local participation in federally-funded educational programs.

As you well know, the Tenth Amendment of the United States Constitution reserves to the States or to the People the powers not enumerated or implied as powers of the federal government. Educational governance is not among those powers delegated to the federal government by the Constitution. Furthermore, judicial precedents indicate that education is a fundamental, state responsibility, and that the federal government cannot interfere with the sovereign power of the state (and their political subdivisions) to make the decisions which determine the integral government functions of these bodies. *National League of Cities v. Usery*, 1976. Nor is education among the rights afforded explicit or implicit protection under the United States Constitution. *San Antonio School District v. Rodriquez*, 1973.

Florida operates an exemplary handicapped education program that is among the finest in the country. Moreover, federal aid to handicapped students represents today less than three percent of the total funds spent by Florida for these programs. Under state law, eighty percent of the program dollars generated by handicapped programs in the State must be spent directly on those programs. Perhaps, some other states are not doing as much--although many are--but that still does not justify the federal government imposing its standards and regulations on states such as Florida, which are doing an excellent job.

Federal rules and regulations to implement P.L. 94-142 are excessive on their face. They are even more unreasonable in light of the small federal contribution that is being made. As you, Mr. Chairman, and many members of the Subcommittee are aware, serious efforts have already been made to cut handicapped funding at the federal level for fiscal year 1978 appropriations. Educational programs are traditionally funded below authorized levels, and we see little reason to believe that this pattern will change.

We are confident, however, that Florida's handicapped education program goals are compatible and "substantially comply" with the basic goals and objectives of P.L. 94-142--to provide an appropriate free education for all handicapped children. We are also certain that an evaluation or "performance audit" of our state handicapped program would reveal much greater compliance with federal goals, than with arbitrary federal requirements that conflict with the letter of Florida's Constitution and law--which is the real purpose of this important law.

To conclude this testimony, we'd like to suggest, for the Subcommittee's consideration, some possible changes in P.L. 94-142 which we believe maintain the basic thrust of the Act, and improve its compatibility with state and local laws.

First, the Congress should establish broad goals and standards that would allow the States to administer programs in education, consistent with state constitutional and legal requirements, that are properly the responsibilities of each state.

Second, the Congress should adopt an overall approach to federal funding of educational programs that recognizes and respects the authority of each state to operate independently its own state system of public education according to its Constitution and statutes.

Third, the Congress should provide for greater discretion and flexibility in administering special or handicapped education programs at the state and local levels, consistent with broad program goals enunciated for the nation.

Fourth, the Congress should include as part of the Education for All Handicapped Children Act, an intra-state funding formula that would permit states with exemplary handicapped education programs and state finance plans to "equalize" handicapped education expenditures among school districts. Perhaps the Congress could use as its criteria to evaluate state finance plans a "test" similar to the one used in determining the effectiveness of state plans for federal impact aid, authorized by P.L. 93-380.

Fifth, the Congress should authorize, by amending the Act, a method of counting handicapped children which reflects the scope of special education and related services that are actually provided. In other words, don't penalize states by under-counting the number of handicapped children and their handicaps that should actually be served.

Sixth, although I promised not to discuss money in my opening remarks, I do believe that the Congress should make every effort to fully fund federal handicapped programs. P.L. 94-142 is a very critical and important federal program, and in light of the impact that it will have on many of the states who choose to participate in it, the Congress should appropriate all the funds authorized by the Act.

In closing, I wish to add that it has been a pleasure to appear before the Senate Subcommittee on the Handicapped and to discuss an issue that concerns all of us deeply. I hope, Mr. Chairman, that you and members of the Subcommittee will consider our remarks and suggestions, and continue with the fine job you are doing to promote a full and appropriate education for all handicapped children.

FLORIDA HOUSE OF REPRESENTATIVES
DONALD L. TUCKER, Speaker/JOHN L. RYALS, Speaker Pro Tempore
COMMITTEES ON APPROPRIATIONS

Edmond M. Fortune, Chairman/**Robert C. Hector**, Vice Chairman

R. Earl Dixon
Chairman, Committee 1

Herbert F. Morgan
Chairman, Committee 2

William C. Andrews
Chairman, Committee 3

Elaine Bloom
Chairperson, Committee 4

August 8, 1977

Honorable Jennings Randolph
United States Senate
The Capitol
Washington, D.C. 20510

Dear Senator Randolph:

Please let me apologize for the inordinate amount of time it has taken to respond to your inquiry regarding my testimony before your subcommittee concerning the Education for All Handicapped Children Act of 1975, Public Law 94-142.

Your letter of June 30, 1977 posed two questions, the first dealing with conflicts between the due process procedures set forth in P.L. 94-142 and Florida's Administrative Procedures Act. The due process procedures mandated by P.L. 94-142 requires that a handicapped child or the parent of a handicapped child dissatisfied with the decision of an LEA which affects their rights must be provided the opportunity to appeal directly to the SEA and then to the courts.

Florida's Administrative Procedures Act provides a simplicity and fairness which insures all persons aggrieved by an action of a public agency the shortest, least-cost way of pursuing satisfaction and resolution of their complaint.

As it applies to educational matters, the law provides initially for an informal conference at the lowest administrative level to resolve dissatisfactions, in this case with the principal of the school and other involved parties. If agreement cannot be reached through the informal process, a request may be made to the school board for a formal hearing. The school board, at its own discretion, may appoint the hearing officer or may request that a hearing officer be appointed by the State Division of Administrative Hearings, Department of Administration (a State agency). Specific rules of procedure are outlined in the law as to notice, representation and procedure in the conduct of a formal hearing. The findings of the hearing officer, in the context of a hearing in which substantive rights are at issue, are only recommendations; the agency head, in this case the school board, must make the final decision. In the case of a challenge by an affected party to rules and regulations promulgated by a school board, the Division of Administrative Hearings appoints the hearing officer, whose decision, in all cases, is final.

This is the juncture at which state and federal law depart. P.L. 94-142 requires appeal to be made to the SEA. Although the SEA is the chief policy-making body for education in Florida, it is the school boards which are charged with the operation, control, and supervision of the public schools within a school district. The Florida Administrative Procedures Act, therefore, permits recourse from the administrative decision of a district school board directly to a court of competent jurisdiction, i.e. the District Court of Appeals. The law does not provide for appeal to the SEA because it would, among other things, add an unnecessary layer of bureaucracy to the appeals process, increase the cost of appeal to the parent and lengthen the amount of time of the appeal process considerably.

The second question asked for documentation of a statement in my testimony which indicated that Florida's Constitution specifically gives control of educational programs to the local school boards. P.L. 94-142 requires a State Educational Authority (Florida Board of Education) to provide direct educational services to handicapped children should a local school district either refuse to participate in handicapped programs or fail to adequately serve the children.

Section 2, Article IX of the Constitution of the State of Florida establishes the State Board of Education as a policy-making body and puts the responsibility for "operation, control and supervision of all free public schools within the school district" in the hands of the school board, pursuant to Section 4, Article IX (attachment 2). The duties and responsibilities of the State Board of Education and the local school districts are further described and delineated in statute. Section 229.053, Florida Statutes, describes the State Board of Education as "the chief policy-making and coordinating body of public education in Florida." The local school boards are given the responsibility, in addition to academic and vocational programs, to "provide an appropriate program of special instruction for exceptional children." Section 230.23(4)(n)1, Florida Statutes (attachment #3).

Honorable Jennings Randolph
Page Three
August 8, 1977

If we can be of further assistance in this matter or should you have additional clarifying questions, please let me know. Our interest and commitment in the area of the handicapped is continuous and unflagging.

Sincerely,

Elaine Bloom

Elaine Bloom, Chairperson
Committee on Federal-State
Appropriations

EB:gs

Attachments

FLORIDA HOUSE OF REPRESENTATIVES
Tallahassee

Elaine Bloom
Representative, 100th District
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Tallahassee, Florida 32304
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Committees:
Appropriations
Committee IV, Chairperson
Education
Rules & Calendar

1977 AUG 19 PM 1:51

[illegible]

August 10, 1977

Honorable Jennings Randolph
United States Senate
The Capitol
Washington, D.C. 00510

Dear Senator Randolph:

Enclosed are the documents which we hope will assist your committee in producing the few changes necessary to assure that P.L.94-142 can be appropriately implemented:

1. Response to your letter of June 30th.

Attachment #1:	Appropriate portions of Chapter 120, Florida's Administrative Procedures Act.
Attachment #2:	Article IX of Florida's Constitution.
Attachment #3:	Appropriate portions of Chapters 229 and 230, Florida Statutes, dealing with school board powers and exceptional child programs.
Attachment #4:	Conflicts posed by P.L.94-142 and suggested remedies.

2. Corrected transcript of my remarks (which has been sent to Jim Powell) and the prepared statement I would like to have become part of your record.

The only actual technical amendments that we recommend for immediate consideration are noted as part of Attachment #4. We believe you will agree these two suggested changes are minor and harmless to the law as it is now written.

Thank you for your consideration.

Very truly yours,

Elaine Bloom

Elaine Bloom, Chairperson
Federal/State Appropriations Committee

EB/lhp
Enclosures

Attachment #1

CHAPTER 120

ADMINISTRATIVE PROCEDURE ACT

120.50 Exception to application of chapter.
120.51 Short title.
120.52 Definitions.
120.53 Adoption of rules of procedure and public inspection.
120.54 Rulemaking; adoption procedures.
120.55 Publication.
120.56 Administrative determination of rule.
120.565 Declaratory statement by agencies.
120.57 Decisions which affect substantial interests.
120.58 Agency action; evidence, record and subpoenas.
120.59 Orders.
120.60 Licensing.
120.61 Official recognition.
120.62 Agency investigations.
120.63 Exemption from act.
120.65 Hearing officers.
120.66 Ex parte communications.
120.68 Judicial review.
120.69 Enforcement of agency action.
120.70 Annual report.
120.71 Disqualification of agency personnel.
120.72 Legislative intent; prior proceedings and rules; exception.
120.721 Effect of chapter 75-22, Laws of Florida, on rules.
120.73 Circuit court proceedings; declaratory judgments.

120.50 Exception to application of chapter.—This chapter shall not apply to the Legislature or the courts.

History.—s. 1, ch. 74-310.

120.51 Short title.—This chapter may be known and cited as the "Administrative Procedure Act."

History.—s. 1, ch. 74-310.

120.52 Definitions.—As used in this act:

(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the Constitution.

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 160, 163, 298, 373, 380 and 582.

(c) Each other unit of government in the state, including counties and municipalities to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any request made under [1][s. 120.54(4)].

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the Administrative Procedures Committee.

(5) "Division" means the Division of Administrative Hearings of the Department of Administration.

(6) "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and Blind, or a unit of the State University System other than the Board of Regents.

(7) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(8) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment [2][of a license] or imposition of terms for the exercise of a license.

(9) "Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing.

(10) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(11) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(12) "Proposed order" means the advance text, under s. 120.58(1)(e), of the order which a collegial agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.

(13) "Recommended order" means the official recommendation of a hearing officer assigned by the division to an agency for the final disposition of a proceeding under s. 120.57.

(14) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public,

(b) Legal memoranda or opinions issued to an agency by the attorney general or agency legal opinions prior to their use in connection with the agency action, or

(c) The preparation or modification of:

1. Agency budgets,

2. Contractual provisions reached as a result of collective bargaining, or

3. Agricultural marketing orders under chapter 573 or chapter 601.

History.—s. 1, ch. 74-310; s. 1, ch. 75-191.

[1]Note.—Bracketed section number substituted for "120.54(3)" by the editors to conform this cross reference to conference committee amendment of [illegible]

[2]Note.—Bracketed words inserted by the editors in the interest of clarity.

120.53 Adoption of rules of procedure and public inspection.—

(1) In addition to other requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including copies of all forms and instructions used by the agency.

(c) Adopt rules of procedure appropriate for the presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(d) Adopt rules for the scheduling of meetings, hearings, and workshops, including the establishment of agenda therefor, one of which shall be that an agenda shall be prepared by the agency at least 7 days before the event and made available for distribution on request of any interested persons. The agenda shall contain the items to be considered, in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting.

(2) Each agency shall make available for public inspection and copying, at no more than cost:

(a) All rules formulated, adopted, or used by the agency in the discharge of its functions.

(b) All agency orders.

(c) A current subject-matter index, identifying for the public any rule or order issued or adopted after January 1, 1975.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

(3) No agency rule or order is valid for any purpose until it has been made available for public inspection as herein required unless the person or party against whom enforcement is sought has actual knowledge of it.

History.—s. 1, ch. 74-310; s. 2, ch. 75-191.

120.54 Rulemaking; adoption procedures.—

(1) Prior to the adoption, amendment, or repeal of any rule not described in subsection (8), an agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, a summary of the proposed rule, and the specific legal authority under which its adoption is authorized. In addition, the agency shall set forth an estimate of the economic impact of the proposed rule on all persons affected by it. If the agency determines that this is not possible, the reasons why the costs of the proposed rule cannot be estimated shall be stated in the notice. The notice shall contain the location where the text of the proposed rule can be obtained if such text is not included in the notice.

(a) Except as otherwise provided in this paragraph, the notice shall be mailed to the committee, to all persons named in the proposed rule, and to all persons who have made requests of the agency for advance notice of its proceedings at least 14 days prior to such mailing. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed. Notice of intent by an educational unit to adopt, amend, or repeal any rule not described in subsection (8) shall be made:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Such publication, mailing, and posting of notice shall occur at least 14 days prior to the intended action.

(b) The notice shall be published in the Florida Administrative Weekly not less than 21 days prior to the intended action, except that notice of actions proposed by educational units or units of government with jurisdiction in only one county or a part thereof need not be published in the Florida Administrative Weekly or transmitted to the committee.

(2) If the intended action concerns any rule other than one relating exclusively to organization, procedure or practice, the agency shall, on the request of any affected person received within 14 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions.

(3)(a) Any substantially affected person may seek an administrative determination of the [1][invalidity] of any proposed rule which contains any provision not relating exclusively to organization, practice, or procedure on the ground:

1. That the proposed rule is an invalid exercise of validly delegated legislative authority.

2. That the proposed rule is an exercise of invalidly delegated legislative authority.

(b) The request seeking a determination under this subsection shall be in writing and must be filed with the division within 14 days after the date of publication of the notice. It must state with particularity facts sufficient to show that the person challenging the proposed rule would be substantially affected by it and facts sufficient to show the grounds, which may be stated in the alternative, on which the proposed rule is alleged to be invalid.

(c) Within 10 days after receiving the petition, the division director, if he determines that the petition complies with the above requirements, shall assign a hearing officer who shall conduct a hearing within 30 days thereafter unless the petition is withdrawn. Within 30 days after conclusion of the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The hearing officer may declare the proposed rule wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn from the committee by the adopting agency and shall not be adopted. No rule shall be adopted until 21 days after the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety.

(d) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The agency proposing the rule and the person requesting the hearing shall be adversary parties. Other substantially affected persons may join the proceeding as parties or intervenors on appropriate terms which will not substantially delay the proceedings. Failure to proceed under this subsection shall not constitute failure to exhaust administrative remedies.

(4) Any person regulated by an agency or having a substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by s. 120.53. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days after the date of filing a petition, the agency shall initiate rulemaking proceedings under this act, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(5) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized shall be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of such materials and given a reasonable opportunity to examine them and offer written comments thereon or written rebuttal thereto.

(6) Each rule adopted shall be accompanied by a reference to the specific rulemaking authority pursuant to which the rule was adopted and a reference to the section or subsection of law being implemented, interpreted, or made specific.

(7) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, which statement need not be printed in the Florida Administrative Code. No rule shall be amended by reference only. Amendments shall set out the amended rule in full in the same manner as required by the constitution for laws.

(8)(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger by any procedure which is fair under the circumstances and necessary to protect the public interest, provided that:

1. The procedure provides at least the procedural protection given by other statutes, the Florida Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules shall be published in the first available issue of the Florida Administrative Weekly. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include, but not be limited to, those rules pertaining to perishable agricultural commodities.

(c) An emergency rule adopted under this subsection may not be effective for a period longer than 90 days and shall not be renewable. However, the agency may take identical action by normal rulemaking procedures.

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or at a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(9) The Administration Commission shall promulgate one or more sets of model rules of procedure which shall be reviewed by the committee and filed with the Department of State. On filing with the department, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent that each agency does not adopt a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may seek modification of the model rules of procedure to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or permit persons in this state to receive tax benefits under federal law or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the modification shall be published in the Florida Administrative Weekly. Agency rules adopted to comply with ss. 120.53 and 120.565 must be in substantial compliance with the model rules.

(10)(a) The adopting agency shall file with the committee a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, and the notice required by subsection (1) at least 21 days prior to the proposed adoption date. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. As a legislative check on legislatively created authority, the committee shall examine the proposed rule and its accompanying material for the purpose of determining whether the proposed rule is within the statutory authority on which it is based, whether the rule is in proper form, and whether the notice issued pursuant to subsection (1) is sufficient to give adequate notice of the effect of the rule. After examining the proposed rule, the chairman of the committee may notify the agency and the Department of State that the committee is considering an objection to the rule. If it disapproves the rule, the committee shall, prior to the time the rule becomes effective, certify the fact to the agency proposing the rule, together with a statement detailing with particularity its objections to the proposed rule. The agency submitting the rule shall, within 30 days of the committee's objection, either modify the proposed rule to meet the objections found by the committee, withdraw the proposed rule in its entirety, or refuse to modify the rule. Failure of the agency to act within 30 days shall constitute withdrawal of the rule in its entirety. Proposed rules modified to meet committee objections shall be resubmitted to the committee, and the committee shall give priority to modified rules when setting its agenda. This paragraph shall not apply to educational units other than units of the State University System, to local units of government with jurisdiction in only one county or a part thereof, or to emergency rules adopted pursuant to subsection (8). However, agencies adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) Twenty-one days after the notice required by subsection (1), or after the final public hearing, if the hearing extends beyond the 21 days, the adopting agency shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule.

(11) The proposed rule shall be adopted on filing with the Department of State and become effective 20 days after filing, on a later date specified in the rule, or on a date required by statute.

(12) If the committee disapproves a proposed rule and the agency does not modify the rule, the committee shall file with the Department of State a notice of the disapproval detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule when it is published in the Florida Administrative Code, a reference to the committee's disapproval and to the issue of the weekly in which the full text thereof appears.

(13) No agency has inherent rulemaking authority; nor has any agency authority to establish penalties for violation of a rule unless the legislature when establishing a penalty specifically provides that the penalty shall apply to rules.

(14) The rulemaking provisions of this chapter shall not apply to the judges of industrial claims or compensation appeals referees.

History.—s. 1, ch. 74-310; s. 3, ch. 75-191.

[1] Note.—Bracketed word substituted for "validity" by the editors.

120.55 Publication.—

(1) The Department of State shall:

(a) Conduct a systematic and continuing study of the rules of this state for the purpose of reducing their number and bulk and removing redundancies and unnecessary repetitions and make such changes in style and form as are required by paragraph (d).

(b) Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. Rules general in form but applicable to only one school district, community college district, county, or a part thereof, or to the Florida School for the Deaf and Blind shall not be published in the Florida Administrative Code. Rules so omitted shall be filed in the Department of State, and exclusion from publication in the Florida Administrative Code shall not affect their validity or effectiveness. The department shall publish a compilation of, and index to, all rules so omitted at least annually.

(c) Publish a weekly publication entitled the "Florida Administrative Weekly" which shall contain:

1. A summary of, and an index to, all rules filed during the preceding week.

2. All hearing notices required by subsection 120.54(1), showing the time, place, and date of the hearings and the summaries of all rules proposed for consideration.

3. All notices of meetings, hearings, and workshops conducted in accordance with the provisions of paragraph 120.53(1)(d), including a statement of the location at which a copy of the agenda may be obtained.

4. Notice of each request for authorization to amend or repeal an existing model rule or for the adoption of new model rules.

5. Notice of each request for exemption from any provision of this chapter.

6. Notice of petitions for declaratory statements or administrative determinations.

7. A summary of each objection filed by the Administrative Procedures Committee during the preceding week to any rule.

8. Any other material required or authorized by law or deemed useful by the department.

(d) Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification.

(e) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules and insert history notes.

(f) Before making any change in any rules as provided in paragraphs (a) or (e), obtain the advice and consent of the affected agency.

(g) Make copies of the Florida Administrative Code available for sale at no more than cost and copies of the Florida Administrative Weekly on an annual subscription basis for not more than $5 per year.

(h) Charge each agency using the Florida Administrative Weekly a space rate computed to cover all costs related to the Florida Administrative Weekly.

(2) Each agency shall print or distribute copies of its rules, citing the specific rulemaking authority pursuant to which each rule was adopted, at its own expense or purchase copies for distribution from the Department of State.

(3)(a) The Department of State shall furnish the Florida Administrative Code and the Florida Administrative Weekly, without charge and upon request, as follows:

1. One set to each federal and state court having jurisdiction over the residents of the state; each Florida senator, congressman, and state legislator; the legislative library; each state university library; the state library; and each standing committee of the senate and house of representatives.

2. Two sets to each state department.

3. Three sets to the library of the attorney general, each law school library in Florida, the secretary of the senate, and the clerk of the house.

(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to the depository libraries of the Florida State Library, each clerk of the circuit court, and each state department, for posting for public inspection.

(4)(a) There is hereby created in the State Treasury a revolving fund to be known as the Department of State's "Publication Revolving Trust Fund."

(b) All fees and moneys collected by the Department of State under this chapter shall be deposited in the revolving trust fund for the purpose of paying for the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly and for associated costs incurred by the department in carrying out this chapter.

(c) The unencumbered balance in the revolving trust fund at the beginning of each fiscal year shall not exceed $100,000, and any excess shall be transferred to the General Revenue Fund.

(d) It is the intent of the Legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly. To that end, the Department of State is authorized to add a surcharge of 10 percent to any charge relating to the Florida Administrative Weekly until such time as the Publication Revolving Trust Fund has transferred to the General Revenue Fund an amount equal to all funds appropriated to the trust fund.

History.—s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191.

120.56 Administrative determination of rule.—

(1) Any person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground:

(a) That the rule is an invalid exercise of validly delegated legislative authority.

(b) That the rule is an exercise of invalidly delegated legislative authority.

(2) The petition seeking an administrative determination under this section shall be in writing and state with particularity facts sufficient to show the person seeking relief is substantially affected by the rule and facts sufficient to show the grounds on which the rule is alleged to be invalid, which may be stated in the alternative. The petition shall be filed with the division. Within 10 days after receiving the petition, the division director shall, if he determines that the petition complies with the above requirements, assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn.

(3) Within 30 days after the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The hearing officer may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires or at a later date specified in the decision.

(4) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The petitioner and the agency whose rule is attacked shall be adversary parties. Other substantially affected persons may join the proceedings as parties or intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

History.—s. 1, ch. 74-310; s. 5, ch. 75-191.

120.565 Declaratory statement by agencies.—Each agency shall provide by rule the procedure for the filing and prompt disposition of petitions for declaratory statements as to the applicability of any statutory provision or of any rule or order of the agency. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191.

120.57 Decisions which affect substantial interests.—The provisions of this section shall apply in all proceedings in which the substantial interests of a party are determined by an agency. Rulemaking proceedings shall be governed solely by s. 120.54 unless, and to the extent that, a party timely asserts that his substantial interests will be affected in the proceedings and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that rulemaking proceedings are not adequate to protect a party's interests, it shall convene a separate proceeding and proceed under the provisions of this section. The agency may request similarly situated parties to join and participate in such a proceeding. The rulemaking proceeding shall not be concluded prior to the issuance of the final order in the separate proceeding. Unless waived by consent of all parties and the agency involved, subsection (1) shall apply to the extent that the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) shall apply in all other cases.

(1) FORMAL PROCEEDINGS.—

(a) A hearing officer assigned by the division shall conduct all hearings under this subsection, except for:

1. Hearings before agency heads other than those within the Department of Professional and Occupational Regulation;

2. Hearings before a member of an agency head other than agency heads within the Department of Professional and Occupational Regulation;

3. Hearings before the Industrial Relations Commission, judges of industrial claims, unemployment compensation appeals referees, and the Public Service Commission or its examiners;

4. Hearings regarding drivers' licensing pursuant to chapter 322;

5. Hearings within the [1]Division of Family Services of the Department of Health and Rehabilitative Services; and

6. Hearings in which the division is a party; when the division is a party, an attorney assigned by the Administration Commission shall be the hearing officer.

(b) In cases to which this subsection is applicable, the following procedures shall apply:

1. Requests for hearings shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days, unless waived by all parties, which notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for proceedings conducted as prescribed in subsection 120.54(3) or s. 120.56, all petitions or requests for hearings under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall notify the division within 10 days of receipt of the petition or request, requesting the assignment of a hearing officer and, with the concurrence of the division, setting the time, date, and place of the hearing. On request of any agency, the division shall assign hearing officers with due regard to the expertise required for the particular matter. Any party may request the disqualification of any hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. The record in cases governed by this subsection shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

g. All staff memoranda or data submitted to the hearing officer during the hearing, or prior to its disposition, after notice of the submission to all parties;

h. All matters placed on the record after an ex parte communication pursuant to subsection 120.66(2); and

i. The official transcript.

6. The agency shall accurately and completely preserve all testimony in the proceeding and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

7. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

8. The hearing officer shall complete and submit to the agency and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least 10 days in which to submit written exceptions to the recommended order.

9. The agency may adopt the recommended order as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a recommended order, but may not increase it without a review of the complete record. In the event a court, in reversing an agency's order, finds that such agency action was done in bad faith or maliciously, the court may award attorney's fees and costs to the aggrieved prevailing party.

10. If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record

and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

11. A hearing officer who is a member of an agency head may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer.

(2) INFORMAL PROCEEDINGS.—In cases to which subsection (1) does not apply:

(a) The agency shall, in accordance with its rules of procedure:

1. Give reasonable notice to affected persons or parties of the agency's action, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give affected persons or parties, or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the agency's action or refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds;

2. Evidence received or considered;

3. All written statements submitted by persons and parties;

4. Any decision overruling objections;

5. All matters placed on the record after an ex parte communication pursuant to subsection 120.66(2); and

6. The official transcript.

(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(4) This section shall not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191.

[1] Note.—Division of Family Services abolished by s. 3, ch. 75-48.

120.58 Agency action; evidence, record and subpoenas.—

(1) In agency proceedings for a rule or order:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This paragraph applies only to proceedings under s. 120.57.

(b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure.

(c) Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(d) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(e) If a majority of those who are to render the final order have not heard the case or read the record, a decision adverse to a party other than the agency itself shall not be made until a proposed order is served upon the parties and they are given an opportunity to file exceptions and present briefs and oral arguments to those who are to render the decision. The proposed order shall contain necessary findings of fact and conclusions of law and a reference to the source of each. The proposed order shall be prepared by the individual who conducted the hearing, if available, or by one who has read the record. The parties by written stipulation may waive compliance with this paragraph.

(f) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(2) Any person subject to a subpoena or order directing discovery may, before compliance and on timely petition, request the agency having jurisdiction of the dispute to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material, but the decision of the agency on any such request shall not be proposed agency action governed by s. 120.57.

(3) Any person failing to comply with a subpoena or order directing discovery issued under the authority of this act shall be in contempt of the agency issuing the subpoena or order and subject to any penalties which the agency is authorized by law to prescribe; however, no person shall be in contempt while the subpoena or order is being challenged under subsection (2). In the absence of agency action on the default within 30 days, the party requesting the subpoena or order may bring proceedings in an appropriate court for enforcement of the subpoena or order, and a failure to comply with an order of the court shall result in a finding of contempt of court. In the absence of statutory authority for a remedy, the violator may receive a fine not to exceed $500.

History.—s. 1, ch. 74-310; s. 8, ch. 75-191.

120.59 Orders.—

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclu-

sions of law separately stated, and it shall be rendered within 90 days:

(a) After the hearing is concluded, if conducted by the agency,

(b) After a recommended order is submitted to the agency and mailed to all parties, if [1][the hearing is] conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

The 90-day period may be waived or extended with the consent of all parties.

(2) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(3) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

(4) Parties shall be notified either personally or by mail of any order, and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record.

History.—s. 1, ch. 74-310.

[1] Note.—Bracketed words inserted by the editors for clarity.

120.60 Licensing.—

(1) Unless otherwise provided by statute enacted subsequent to the effective date of this act, licensing is subject to the provisions of s. 120.57.

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons. Each agency, upon issuing or denying a license, shall state with particularity the grounds or basis for the issuance or denial of same, except where issuance is a ministerial act. On denial of a license application on which there has been no hearing, the denying agency shall inform the applicant of any right to a hearing pursuant to s. 120.57.

(3) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application has been finally acted upon by the agency [1][or], in case the application is denied or the terms of the license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has given reasonable notice by certified mail to the licensee of facts or conduct which warrant the intended action and the licensee has been given an opportunity to show that he has complied with all lawful requirements for the retention of the license.

(5) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension of a license, it shall show compliance in its order with the requirements imposed by subsection 120.54(8) on agencies making emergency rules. Summary suspension may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

History.—s. 1, ch. 74-310.

[1] Note.—Bracketed word substituted for word "and."

120.61 Official recognition.—When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

History.—s. 1, ch. 74-310.

120.62 Agency investigations.—

(1) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript of his oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any hearing officer or agency in an investigation or in any agency proceeding has the right, at his own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History.—s. 1, ch. 74-310.

120.63 Exemption from act.—

(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in subsection 120.54(1).

(b) An exemption, and any alternative procedure prescribed, shall terminate 90 days following adjournment sine die of the next regular legislative session after issuance of the exemption, and it shall be renewable upon the same or similar facts no more than once. Such renewal shall terminate 90 days following adjournment sine die of the next regular legislative session following the renewal.

History.—s. 1, ch. 74-310.

120.65 Hearing officers.—

(1) There is hereby created the Division of Administrative Hearings within the Department of Administration, to be headed by a director who shall be appointed by the Administration Commission and confirmed by the senate. The division shall be exempt from the provisions of chapter 216.

(2) The division shall employ full-time hearing officers to conduct hearings required by this chapter or other law. No person may be employed by the division as a full-time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding 3 years.

(3) If the division cannot furnish a division hearing officer promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate a hearing officer who is a qualified full-time employee of an agency other than the requesting agency which is located in that part of the state where the parties and witnesses reside.

(4) The director shall have the discretion to designate qualified laypersons to conduct hearings. If a layperson is so designated, the director shall assign a hearing officer to assist in the conduct of the hearing and to rule upon proffers of proof, questions of evidence, disposition of procedural requests, and similar matters.

(5) By rule, the division may establish:

(a) Further qualifications for hearing officers and shall establish procedures by which candidates will be considered for employment or contract.

(b) The manner in which public notice will be given of vacancies in the staff of hearing officers.

(c) Procedures for the assignment of hearing officers.

(6) Beginning July 1, 1976, all costs of administering the division shall be paid to the division trust fund on a pro rata basis by the agencies using its services. The division shall submit statements to the agencies at least quarterly.

(7) There is hereby created in the state treasury a revolving fund to be known as the "Division of Administrative Hearings Revolving Trust Fund." All fees and other moneys collected by the division for services rendered under this act shall be deposited in the revolving trust fund, and expenses of the division shall be paid from the fund.

(8) The division is authorized to provide hearing officers on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(9) The division shall have the authority to adopt reasonable rules to carry out the provisions of this act.

History.—s. 1, ch. 74-310; s. 9, ch. 75-191.

120.66 Ex parte communications.—

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head after the agency head has received a recommended order or to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to an advisory staff which does not participate in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A hearing officer who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The hearing officer may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed $500 or [1][be subjected to] such other disciplinary action as his superiors may determine.

History.—s. 1, ch. 74-310; s. 10, ch. 75-191.

[1] Note.—Bracketed words substituted for "by" by the editors for clarity.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) Except in matters for which judicial review by the supreme court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida Appellate Rules.

(3) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with subsection [1][(6)].

(5) The record for judicial review shall consist of the following:

(a) The agency's written document expressing the order, the statement of reasons therefor, if issued, and the record under s. 120.57, if review of proceedings under that section is sought.

(b) The agency's written document expressing the action, the statement of reasons therefor, if issued, and the materials considered by the agency under s. 120.54, if review is sought of proceedings under that section.

(c) The agency's written document expressing the action, and other written documents identified by the agency as having been considered by it before its action and used as a basis for its action, if review is sought of proceedings under s. 120.56 or if there has been no proceeding under s. 120.54 or s. 120.57.

(6) When there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt, fact-finding proceeding under this act after [2][having] a reasonable opportunity to reconsider its determination on the record of the proceedings.

(7) The reviewing court shall deal separately with disputed issues of agency procedure, interpretations of law, determinations of fact, or policy within the agency's exercise of delegated discretion.

(8) The court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. Failure of any agency to comply with s. 120.53 shall be presumed to be a material error in procedure.

(9) If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(a) Set aside or modify the agency action, or

(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(10) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of s. 120.57 of the act, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record.

(11) If the agency's action depends on facts determined pursuant to subsection (6), the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:

(a) Outside the range of discretion delegated to the agency by law;

(b) Inconsistent with an agency rule, an officially stated agency policy, or a prior agency practice, if deviation therefrom is not explained by the agency; or

(c) Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(13)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties, and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(14) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

History.—s. 1, ch. 74-310.

[1] **Note.**—Bracketed subsection number substituted for "(7)" to correct the cross reference for a committee amendment to SB 892.

[2] **Note.**—Bracketed word substituted for "giving" by the editors.

120.69 Enforcement of agency action.—

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state. However, no such action may be commenced:

1. Prior to 60 days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the attorney general, and any alleged violator of the agency action.

2. If an agency has filed, and is diligently prosecuting, a petition for enforcement.

(c) A petition for enforcement filed by a nongovernmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief, temporary or permanent equitable

relief, any fine, forfeiture, penalty, or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed $1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action, on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in subsection 120.68(6).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with an order of the court, the court shall punish him in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety, or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History.—s. 1, ch. 74-310.

120.70 Annual report.—Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(1) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters, and other personnel in proceedings under this act.

(2) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

History.—s. 1, ch. 74-310.

120.71 Disqualification of agency personnel.—

(1) Any individual serving alone or with others as an agency head shall be disqualified from serving in an agency proceeding for bias, prejudice, interest, or other causes for which a judge may be recused. If the disqualified individual holds his position by appointment, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

History.—s. 1, ch. 74-310.

120.72 Legislative intent; prior proceedings and rules; exception.—

(1) The intent of the legislature in enacting this complete revision of chapter 120, Florida Statutes, is to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the legislature that the provisions of this act shall replace all other provisions in the Florida Statutes, 1973, relating to rulemaking, agency orders, administrative adjudication, or judicial review [1][of administrative action], except for marketing orders adopted pursuant to chapters 573 and 601.

(2) All administrative adjudicative proceedings begun prior to January 1, 1975, shall be continued to a conclusion under the provisions of the Florida Statutes, 1973, except that administrative adjudicatory proceedings which have not progressed to the stage of a hearing may, with the consent of all parties and the agency conducting the proceeding, be conducted in accordance with the provisions of this act as nearly as is feasible.

(3) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.

(4)(a) All prior rules not adopted following a public hearing as provided by statute shall be void and unenforceable after October 1, 1975, and shall be stricken from the files of the Department of State and from the files of the adopting agency.

(b) [2][Any rule] in effect on, or filed with the Department of State prior to, January 1, 1975, except those adopted following a public hearing as provided by statute, shall be forthwith reviewed by the agency concerned on the written request of a person substantially affected by the rule involved and this provision. The agency concerned shall initiate the rulemaking procedures provided by this act within 90 days after receiving such written request. If the agency concerned fails to initiate the rulemaking procedures within 90 days, the operation of the rule shall be suspended. This provision shall control s. 120.54(4).

(c) All existing rules shall be indexed by January 1, 1975.

History.—s. 3, ch. 74-310.

[1] **Note.**—Bracketed words inserted by editors for clarity.

[2] **Note.**—Bracketed words substituted for words "All rules" by the editors.

120.721 Effect of chapter 75-22, Laws of Florida, on rules.—Any rule or regulation of a public agency involved in or affected by the reorganization of the executive agencies as set forth in chapter 75-22, Laws of Florida, which was valid when adopted under the authority granted by the Legislature to adopt such rule, to the extent it is not inconsistent with chapter 75-22, Laws of Florida, shall remain in effect until it expires by its terms or is specifically repealed or revised as provided by law.

History.—s. 23, ch. 75-22.

120.73 Circuit court proceedings; declaratory judgments.—Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86. If any action has been dismissed or otherwise disposed of on the ground that a provision of the statutes granting the right to a trial or the jurisdiction to render declaratory judgments was repealed by chapter 74-310, Laws of Florida, such action shall be reinstated by order of the court upon the filing of a petition by the plaintiff at any time during the 60-day period immediately following the effective date of this act.

History.—s. 11, ch. 75-191.

Attachment #2

ARTICLE IX

EDUCATION

Sec.
1. System of public education.
2. State board of education.
3. Terms of appointive board members.

Sec.
4. School districts; school boards.
5. Superintendent of schools.
6. State school fund.

SECTION 1. **System of public education.**—Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

SECTION 2. **State board of education.**—The governor and the members of the cabinet shall constitute a state board of education, which shall be a body corporate and have such supervision of the system of public education as is provided by law.

SECTION 3. **Terms of appointive board members.**—Members of any appointive board dealing with education may serve terms in excess of four years as provided by law.

SECTION 4. **School districts; school boards.**—

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

SECTION 5. **Superintendent of schools.**—In each school district there shall be a superintendent of schools. He shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law. The resolution or special law may be rescinded or repealed by either procedure after four years.

SECTION 6. **State school fund.**—The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

ARTICLE X

MISCELLANEOUS

Sec.
1. Amendments to United States Constitution.
2. Militia.
3. Vacancy in office.
4. Homestead; exemptions.
5. Coverture and property.
6. Eminent domain.

Sec.
7. Lotteries.
8. Census.
9. Repeal of criminal statutes.
10. Felony; definition.
11. Sovereignty lands.
12. Rules of construction.
13. Suits against the state.

SECTION 1. **Amendments to United States Constitution.**—The legislature shall not take action on any proposed amendment to the constitution of the United States unless a majority of the members thereof have been elected after he proposed amendment has been submitted for ratification.

SECTION 2. **Militia.**—

(a) The militia shall be composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States; and no person because of religious creed or opinion shall be exempted from military duty except upon conditions provided by law.

(b) The organizing, equipping, housing, maintaining, and disciplining of the militia, and he safekeeping of public arms may be provided for by law.

(c) The governor shall appoint all commissioned officers of the militia, including an adjutant general who shall be chief of staff. The appointment of all general officers shall be subject to confirmation by the senate.

(d) The qualifications of personnel and officers of the federally recognized national guard, including the adjutant general, and the grounds and proceedings for their discipline and removal shall conform to the appropriate United States army or air force regulations and usages.

SECTION 3. **Vacancy in office.**—Vacancy in office shall occur upon the creation of an office, upon the death of the incumbent or his removal from office, resignation, succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

SECTION 4. **Homestead; exemptions.**—

(a) There shall be exempt from forced sale

Attachment #3

CHAPTER 229

FUNCTIONS OF STATE EDUCATIONAL AGENCIES

PART I STATE BOARD OF EDUCATION (ss. 229.011-229.121)

PART II COMMISSIONER OF EDUCATION (ss. 229.501-229.57)

PART III DEPARTMENT OF EDUCATION (ss. 229.75-229.840)

PART I

STATE BOARD OF EDUCATION

229.011 State functions.
229.012 Composition of the State Board of Education.
229.021 Meeting dates.
229.031 Quorum.
229.041 Regulations and standards have force of law.
229.053 General powers of state board.
229.064 Bond issue pursuant to s. 9(d), Art. XII, interest rate.
229.065 Bond issue for fixed capital outlay, 1971-1973 biennium.
229.0551 Bond issues, 1973-1975 biennium.
229.066 Community college indebtedness; bonds and tax anticipation certificates; payment.
229.085 Custody of educational funds.
229.111 State board authorized to accept gifts.
229.121 State board authorized to exchange land.

229.011 State functions.—Public education is basically a function and responsibility of the state. The responsibility for establishing such minimum standards and regulations as shall tend to assure efficient operation of all schools and adequate educational opportunities for all children is retained by the state.

History.—s. 301, ch. 19355, 1939; CGL 1940 Supp. 892(41); ss. 9, 13, ch. 65-239.
Note.—Former s. 229.01.

229.012 Composition of the State Board of Education.—The State Board of Education shall consist of the Governor, the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Agriculture, and the Commissioner of Education. The Governor shall be the chairman of the board, and the Commissioner of Education shall be its secretary and executive officer.

History.—s. 315, ch. 19355, 1939; CGL 1940 Supp. 892(55); s. 20, ch. 29764, 1955; ss. 10, 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 69-389.
Note.—Former s. 229.15.

229.021 Meeting dates.—On or before July 1 of each year the state board shall designate and set aside 1 day each month as a regular meeting day. Special meetings may be held on request of the Commissioner of Education.

History.—s. 304, ch. 19355, 1939; CGL 1940 Supp. 892(44); s. 13, ch. 65-239; s. 1, ch. 69-300.
Note.—Former s. 229.04.

229.031 Quorum.—Four members of the state board shall constitute a quorum. No business may be transacted at any meeting unless a quorum is present.

History.—s. 305, ch. 19355, 1939; CGL 1940 Supp. 892(45); s. 13, ch. 65-239; s. 4, ch. 69-389.
Note.—Former s. 229.05.

229.041 Regulations and standards have force of law.—All rules and regulations and minimum standards adopted or prescribed by the state board in carrying out the provisions of the school code shall, if not in conflict therewith, have the full force and effect of law.

History.—s. 306, ch. 19355, 1939; CGL 1940 Supp. 892(46); s. 13, ch. 65-239.
Note.—Former s. 229.06.

229.053 General powers of state board.—

(1) **The State Board of Education is the chief policy-making and coordinating body of public education in Florida.** It has the general powers to determine, adopt or prescribe such policies, rules, regulations, or standards as are required by law or as it may find necessary for the improvement of the state system of public education. Except as otherwise provided herein it may, as it shall find appropriate, delegate its general powers to the Commissioner of Education or the directors of the divisions of the department.

(2) The board has the following duties:

(a) To adopt comprehensive educational objectives for public education;

(b) To adopt comprehensive long-range plans and short-range programs for the development of the state system of public education;

(c) To exercise general supervision over the divisions of the Department of Education, including the Division of Universities, to the extent necessary to insure coordination of educational plans and programs and resolve controversies and to coordinate the academic calendars of universities, community colleges, and public schools to minimize problems of articulation and student transfers and to insure maximum utilization of facilities;

(d) To adopt and transmit to the Governor as chief budget officer of the state on official forms furnished for such purposes, on or before November 1 of each year, estimates of expenditure requirements for the State Board of Education, the Commissioner of Education, and all of the boards, institutions, agencies, and services under the general supervision of the State Board of Education for the ensuing fiscal year;

(e) To hold meetings, transact business, keep records, adopt a seal, and perform such other duties as may be necessary for the enforcement of all laws

CHAPTER 230

THE DISTRICT SCHOOL SYSTEM

PART I KINDERGARTEN THROUGH GRADE TWELVE (ss. 230.01-230.67)

PART II COMMUNITY COLLEGES (ss. 230.741-230.776)

PART I

KINDERGARTEN THROUGH GRADE TWELVE

230.01 District unit.
230.02 Scope of district system.
230.03 Control; organization, administration, and supervision.
230.04 Membership of school board.
230.05 Term of office.
230.061 School board member residence areas.
230.08 Nomination in primary elections.
230.10 Election of board by districtwide vote.
230.11 School board members to represent entire district.
230.12 Board members shall qualify.
230.15 Organization of board.
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230.17 Place of meetings.
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230.19 Vacancies; how filled.
230.201 Compensation of members of school board.
230.21 School board to constitute a corporation.
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230.222 School board not to prohibit playing of "Dixie."
230.23 Powers and duties of school board.
230.2311 Legislative intent; early childhood and basic skills development plans; objectives, provisions.
230.2313 Student services programs.
230.232 Pupil assignment; powers and duties of school boards.
230.234 Legal services for employees.
230.24 Superintendent; election and term of office.
230.2405 Accreditation of school unaffected by educational qualifications of superintendent.
230.241 Superintendent; procedures for making office appointive.
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230.28 Vacancy in office of superintendent.
230.29 Office of superintendent; where located; how maintained.
230.30 Superintendent to devote full time to office.
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230.32 General powers of superintendents.
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230.33 Duties and responsibilities of superintendent.
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230.35 Schools under control of school board and superintendent.
230.39 Procedure for conducting school district millage elections.
230.59 Educational communications systems.
230.63 When area vocational-technical centers may be organized.
230.631 Area vocational center; minimum criteria for establishment.
230.64 Area vocational-technical center part of district school system; minimum standards.
230.65 State and district financial support of area vocational-technical centers.
230.651 Allocation of vocational education construction funds.
230.66 Industry services training program.
230.67 Job placement and follow-up services.

230.01 District unit.—Each county shall constitute a school district and shall be known as the school district of ____ County, Florida. Each district shall constitute a unit for the control, organization, and administration of schools. The responsibility for the actual operation and administration of all schools needed within the districts in conformity with regulations and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and practicable opportunities authorized by law beyond those required by the state, are delegated by law to the school officials of the respective districts.

History.—s. 4[illegible], ch. 19355, 1939; CGL 1940 Supp. 892(64); s. 2[illegible], ch. 29764, 1955; s. 24, ch. 65-239; s. 3, ch. 69-300; s. 2, ch. 75-4[illegible].

230.02 Scope of district system.—A district school system shall include all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials.

History.—s. 402, ch. 19355, 1939; CGL 1940 Supp. 892(63); s. 1, ch. 69-30[illegible].

230.03 Control; organization, administration, and supervision.—The district school system shall be controlled, organized, administered, and supervised as follows:

(1) DISTRICT SYSTEM.—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and regulations and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as de-

sired, which are authorized but not required by law.

(2) SCHOOL BOARD.—Responsibility for the organization and control of the public schools of the district shall be vested in the school board, as provided by law.

(3) SUPERINTENDENT.—Responsibility for the administration of the schools and for the supervision of instruction in the district shall be vested in the superintendent as the secretary and executive officer of the school board, as provided by law.

(4) PRINCIPAL OR HEAD OF SCHOOL.—Limited responsibility for the administration of any school or schools at a given school center and for the supervision of instruction therein shall be delegated to the principal or head of the school or schools as hereinafter set forth.

History.—s. 403, ch. 19355, 1939; CGL 1940 Supp. 892(64); s. 28, ch. 29764, 1955; s. 1, ch. 57-349; s. 1, ch. 69-300; s. 3, ch. 71-164; s. 58, ch. 71-355; s. 35, ch. 73-221.

230.04 Membership of school board.—The school board in each district shall be composed of not less than five members. Each member of the school board shall be a qualified elector of the district in which he serves, and shall be a resident of the school board member residence area from which he is elected as hereinafter prescribed, unless otherwise provided by law.

History.—s. 404, ch. 19355, 1939; CGL 1940 Supp. 892(67); s. 5, ch. 23726, 1947; s. 1, ch. 69-172.

230.05 Term of office.—School board members shall be elected at the general election in November for terms of 4 years.

History.—s. 405, ch. 19355, 1939; CGL 1940 Supp. 892(68); s. 30, ch. 29764, 1955; s. 1, ch. 69-300.

230.061 School board member residence areas.—

(1) For the purpose of nominating and electing school board members, each district shall be divided into five district school board member residence areas, which shall be numbered one to five, inclusive, so as to place in each district, as nearly as practicable, the same number of qualified electors.

(2) The school board of any district may make any change which it deems necessary in the boundaries of any school board member residence area of the district at any meeting of the school board; provided that such changes shall be made only in odd-numbered years and provided further, that no change which would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the school board, and shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the district within 30 days after the adoption of the resolution, or, if there be no newspaper published in the district, shall be posted at the county courthouse door for 4 weeks thereafter. A certified copy of this resolution shall be transmitted to the Department of State.

History.—s. 3, ch. 57-349; s. 1, ch. 59-232; ss. 10, 35, ch. 69-106; s. 1, ch. 69-300.

230.08 Nomination in primary elections.—Each political party holding a primary election during any election year shall nominate one nominee for membership on the school board from each school board member residence area from which a member is to be elected. The nomination from each school board member residence area shall be by vote of the qualified electors of the entire district.

History.—s. 408, ch. 19355, 1939; CGL 1940 Supp. 892(71); s. 7, ch. 23726, 1947; s. 32, ch. 29764, 1955; s. 1, ch. 69-300.

230.10 Election of board by districtwide vote.—The election of members of the school board shall be by vote of the qualified electors of the entire district. Each candidate who qualifies to have his name placed on the ballot of the general election shall be listed according to the school board member residence area in which he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each school board member residence area. The candidate from each school board member residence area who receives the highest number of votes in the general election shall be elected to the school board.

History.—s. 410, ch. 19355, 1939; CGL 1940 Supp. 892(73); s. 8, ch. 23726, 1947; s. 1, ch. 69-300.

230.11 School board members to represent entire district.—The school board of each district shall represent the entire district. Each member of the school board shall serve as the representative of the entire district, rather than as the representative of a school board member residence area.

History.—s. 411, ch. 19355, 1939; CGL 1940 Supp. 892(74); s. 2, ch. 69-402.

230.12 Board members shall qualify.—Before entering upon the duties of office after being elected, or, if appointed, within 10 days after receiving notice of appointment, each member of the school board shall take the prescribed oath of office.

History.—s. 412, ch. 19355, 1939; CGL 1940 Supp. 892(75); s. 1, ch. 69-300.

230.15 Organization of board.—On the third Tuesday after the first Monday in November of each year, the school board shall organize by electing a chairman. It may elect a vice chairman, and the superintendent shall act ex officio as the secretary. If a vacancy should occur in the chairmanship, the school board shall proceed to elect a chairman at the next ensuing regular or special meeting. At the organization meeting, the superintendent shall act as chairman until the organization is completed. The chairman and secretary shall then make and sign a copy of the proceedings of organization, including the schedule for regular meetings and the names and addresses of all district school officers, and annex their affidavits that the same is a true and correct copy of the original, and the secretary shall file the document within 2 weeks with the Department of Education.

History.—s. 415, ch. 19355, 1939; CGL 1940 Supp. 892(78); s. 38, ch. 29764, 1955; s. 19, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 73-96.

230.16 Regular and special meetings.—The school board shall hold not less than one regular meeting each month for the transaction of business according to a schedule arranged by the school board and shall convene in special sessions when called by for the district school system. It may, when acting as a body, make contracts, also sue and be sued in the name of the school board, provided, that in any suit, a change in personnel of the school board shall not abate the suit, which shall proceed as if such change had not taken place.

(5) PERFORM DUTIES AND EXERCISE RESPONSIBILITY.—The school board may perform those duties and exercise those responsibilities which are assigned to it by law or by regulations of the state board and, in addition thereto, those which it may find to be necessary for the improvement of the district school system in carrying out the purposes and objectives of the School Code.

History.—s. 422, ch. 19355, 1939; CGL 1940 Supp. 892(85); s. 21, ch. 65-239; s. 1, ch. 69-300; s. 26, ch. 72-221; s. 33, ch. 73-338; s. 6, ch. 74-101.

230.222 School board not to prohibit playing of "Dixie."—The school board shall not take action to prohibit school bands from playing the song commonly known as "Dixie," nor shall it take action to prohibit the playing of "Dixie" at school functions by nonschool bands.

History.—s. 1, ch. 69-117; s. [illegible], ch. 69-300.

see p. 1003

230.23 Powers and duties of school board.—The school board, acting as a board, shall exercise all powers and perform all duties listed below:

(1) REQUIRE MINUTES AND RECORDS TO BE KEPT.—Require the superintendent, as secretary, to keep such minutes and records as are necessary to set forth clearly all actions and proceedings of the school board.

(a) *Minutes, recording.*—The typed minutes of each meeting shall be reviewed, corrected if necessary, and approved at the next regular meeting; provided, that this action may be taken at an intervening special meeting if the board desires. The minutes shall be signed by the chairman and superintendent after approval, and shall be kept as a public record in a permanent, bound book in the superintendent's office.

(b) *Minutes, contents.*—The minutes shall show the vote of each member present on all matters on which the board takes action. It shall be the duty of each member to see to it that both the matter and his vote thereon are properly recorded in the minutes. Unless otherwise shown by the minutes, it shall be presumed that the vote of each member present supported any action taken by the board in either the exercise of, violation of or neglect of the powers and duties imposed upon the board by law or legal regulation, whether such action is recorded in the minutes or is otherwise established. It shall also be presumed that the policies, appointments, programs and expenditures not recorded in the minutes but made and actually in effect in the district school system were made and put into effect at the direction of the school board, unless it can be shown that they were done without the actual or constructive knowledge of the members of the board.

(2) CONTROL PROPERTY.—Subject to regulations of the state board, retain possession of all property to which title is now held by the school board and to obtain possession of and accept and hold under proper title as a body corporate by the name of "The School Board of ____ County, Florida," all property which may at any time be acquired by the school board for educational purposes in the district, manage and dispose of such property to the best interests of education, contract, sue, receive, purchase, acquire by the institution of condemnation proceedings if necessary, lease, sell, hold, transmit, and convey the title to real and personal property, all contracts to be based on resolutions previously adopted and spread upon the minutes of the school board, receive, hold in trust, and administer for the purpose designated, money, real and personal property, or other things of value granted, conveyed, devised, or bequeathed for the benefit of the schools of the district or of any one of them.

(3) ADOPT SCHOOL PROGRAM.—Authorize the assembling of all data and the making of school surveys essential to the development of a school program for the entire district and to adopt such a program as the basis for operating the schools—one phase of the program to be a long-time program and another phase to constitute the annual program.

(4) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.—Adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the district, as follows:

(a) *Schools and attendance areas.*—After considering recommendations of the superintendent, to authorize schools to be located and maintained in those communities in the district where they are needed to accommodate, as far as practicable and without unnecessary expense, all the youths who should be entitled to the facilities of such schools, and to approve the area from which children are to attend each such school.

(b) *Elimination of school centers and consolidation of schools.*—Provide for the elimination of school centers within the district and for the consolidation of schools whenever the needs of pupils can better and more economically be served at other school centers than those which they have been attending.

(c) *Adequate educational facilities for all children without tuition.*—See that adequate educational facilities are provided through the uniform system of schools for all children of school age in the district, those facilities to be provided with due regard to the needs of the children on the one hand and to economy on the other.

(d) *Cooperate with boards of adjoining districts in maintaining schools.*—Approve plans for cooperating with school boards of adjoining districts in this state or in adjoining states for establishing school attendance areas composed of territory lying within the districts and for the joint maintenance of district line schools or other schools which are to serve those attendance areas. The conditions of such cooperation shall be as follows:

1. Establishment.—The establishment of a school to serve attendance areas lying in more than one district and the plans for maintaining the school and providing educational services to pupils shall be effected by annual resolutions spread upon the minutes of each school board concerned, which resolutions shall set out the territorial limits of the areas from which children are to attend the school and the

the purpose of providing a cooperative educational service to the districts.

4. Settlement of disagreements.—In the event an agreement cannot be reached relating to any phase of the project or activity, the matter may be referred jointly by the cooperating school boards, or by any individual school board of the cooperating districts, to the Department of Education for decision under regulations of the state board, and its decision shall be binding on all school boards of the cooperating districts.

(k) *Planning time for teachers.*—The board may adopt plans and regulations which will make provisions for teachers to have time for lunch and some planning time when they will not be directly responsible for the children, provided that some adult supervision will be furnished for the students during said periods.

(l) *Comprehensive program of staff development.*—The board shall develop a comprehensive program of staff development. Such program shall include all services provided under the direction of the board and shall make adequate provision for the proper funding of such program.

(m) *Exceptional students.*—Provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the state board as acceptable, including provisions that:

1. The school board provide the necessary professional services for diagnosis and evaluation of exceptional students;

2. The school board provide the special instruction, classes and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private or nonpublic schools or community facilities.

3. The school board submit annually to the department its proposed procedures for the provision of special instruction and services for exceptional students.

4. No student shall be given special instruction or services until he is properly classified as an exceptional student. The parent or guardian of an exceptional student placed or denied placement in a program of special education shall be notified promptly of such placement or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to a review of the determination and of the procedures for obtaining such review.

5. In providing for the education of exceptional students the superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students whenever this is possible. No student shall be segregated and taught apart from normal students until a careful study of the student's case has been made and evidence obtained which indicates that segregation would be for the student's benefit or is necessary because of difficulties involved in teaching the student in a regular class.

6. The principal of the school in which the student is taught shall keep a written record of the case history of each exceptional student showing the reason for the student's withdrawal from the regular class in the public school and his enrollment in or withdrawal from a special class for exceptional students. This record shall be available for inspection by school officials at any time.

7. The district school board shall establish a maximum amount which can be paid by a district school board for an individual exceptional student contract with a nonpublic school, based on the maximum full time **equivalent earned** by the student.

(n) ***Exceptional children.***—

1. Each school board shall provide an appropriate program of special instruction for exceptional children. Such program shall be implemented in annual increments so that all exceptional children shall be served, except that all severely and profoundly retarded children shall be served by 1977-1978.

2. Pursuant to regulations to be adopted by the State Board of Education, a school board may submit to the commissioner a proposal for a grant for programs for the severely and profoundly retarded. Upon the request of any school board, the department shall provide such technical assistance to the school board as is necessary to develop and submit a proposed program for the severely and profoundly retarded. The department may use its own staff or such consultants as may be necessary to accomplish this purpose. The district school boards shall give priority to the programs serving the maximum number of persons within the limits of resources available and to programs which will allow for matching funds or for joint funding from the Federal Government or other public or private sources.

(o) *Early childhood and basic skills development.*—Provide for an individualized diagnostic approach to instruction in the primary grades, kindergarten, and grades one through three which shall permit every child to achieve that level of mastery of the basic skills, including, but not limited to, reading, writing, language arts, arithmetic, measurement, and problem solving, which his physical, mental, and emotional capacities permit.

(p) *Teacher aides.*—Appoint teacher aides to assist members of the instructional staff in the primary grades, kindergarten, and grades one through three, to the extent feasible as determined by the school board.

(5) PERSONNEL.—Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of chapter 231:

(a) *Positions and qualifications.*—Act upon recommendations submitted by the superintendent for positions to be filled and for minimum qualifications for personnel for the various positions.

(b) *Appointment of noninstructional personnel.*—Act on the written recommendations submitted by the superintendent of persons to act as administrative, supervisory, technical, attendance or health assistants, office assistants, school food service personnel, bus drivers, and all other noninstructional personnel and appoint persons to fill such positions. The term "Act on the written recommendations" shall be interpreted to mean that the school board must consider the recommenda-

ATTACHMENT #4

ATTACHMENT #4

FLORIDA CONSTITUTIONAL AND STATUTORY CONFLICTS* WITH THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT
(P.L. 94-142)

CONFLICTING REQUIREMENT	EXPLANATION OF CONFLICT	CONFLICTING STATE LEGAL AUTHORITY	SUGGESTED REMEDY
P.L. 94-142 requires administrative procedures from the LEA to the SEA before recourse to the courts.	The Florida Administrative Procedures Act does not provide for an appeal of a local school board's decision to the State Educational Authority. Such a procedure is considered excessively costly and time consuming to the parent. The Act provides for an informal hearing first, then a formal hearing, then recourse to the courts.	Chapter 120, Florida Statutes. (Attachment #1)	The language of P.L. 94-142 should provide generic requirements for adequate due process procedures. **See Alternates (1) and (2) attached
P.L. 94-142 requires the SEA to provice direct educational services to handicapped children when LEAs refuse to participate in handicapped programs or fail to adequately serve handicapped children.	The Florida Constitution and subsequent clarifying law provides that the Florida Board of Education (SEA) has only policy-making authority and it is the local school boards (LEA) which shall operate, control and supervise education programs, including programs for exceptional children, in the school district.	Sections 2 and 4, Art. IX, Fla. Const. (Attachment #2) Section 229.053, Florida Statutes (Attachment #3) Section 230.03, Florida Statutes, (Attachment #4) Section 230.23(4)(n)1, Florida Statutes (Attachment #5)	The language of P.L. 94-142 should recognize the wide range of relationships which exist between SEAs and LEAs. Some SEAs which have direct statutory control over LEAs have, as a practical matter, little or no functional control over them.

* Other conflicts that had been suggested in the past seem to have been resolved after discussion and review with H.E.W.

7/29/77

** Two alternatives are suggested under 20USC 1415, P.L.94-142, sec.615.

"(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

"PROCEDURAL SAFEGUARDS

USC 1415.

"Sec. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

Impartial Hearing

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

or appropriate administrative hearing agency or appropriate state appeal agency as determined by state law.

ALTERNATE I

Appeal to SEA

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

Currently - no appeal to the state within state law

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

Final decision

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

Civil action.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

District courts jurisdiction.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

Notice, hearing.
20 USC 1416.

"Sec. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

"(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

"PROCEDURAL SAFEGUARDS

USC 1415.

"Sec. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

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Impartial Hearing

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law ~~or by the State educational agency~~. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

or appropriate state appeal agency as determined by state law

ALTERNATE 2

Appeal to SEA

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

Currently - no appeal to the state within state law

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

Final decision

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

Civil action.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

District courts jurisdiction.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

Notice, hearing.
20 USC 1416.

"Sec. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

Senator STAFFORD. Thank you.

The Chair gets the impression that it is about 23 minutes past 11—it might be slightly minus.

The Chair will ask the panel that is next to come forward, Jeanne Frankl from New York; Larry Brown, from Massachusetts, and M. Hayes Mizell, from South Carolina.

We apologize for the time constraints, but as the Chair sees the clock, it appears that we have about 8 minutes. I invite you to proceed as you wish.

STATEMENT OF M. HAYES MIZELL, ASSOCIATE DIRECTOR, SOUTHEASTERN PUBLIC EDUCATION PROGRAM, AMERICAN FRIENDS SERVICE COMMITTEE, COLUMBIA, S.C., JEANNE FRANKL, COUNSEL, PUBLIC EDUCATION ASSOCIATES, NEW YORK, N.Y.; AND LARRY BROWN, PH. D., EXECUTIVE DIRECTOR, MASSACHUSETTS ADVOCACY CENTER, BOSTON, MASS.

Mr. MIZELL. Thank you very much, Senator.

It is a little difficult to bring the extent of our concerns here within the time constraint, but we will try to do that.

Senator STAFFORD. The Chair is giving you 6 more minutes.

Mr. MIZELL. OK.

We think, essentially, that Public Law 94-142 must be allowed to work unencumbered before it is delayed by amendments which really are based more on hypothesis and speculation, rather than on realities of the law's implementation at the State and local level.

Our experience through the years has been that it is not unusual for State and local officials initially to see laws which extend human and educational rights and opportunities as administrative nightmares which will result in unresolvable dilemmas and traumatic departures from past practices. But actually during the last 10 years we have had a whole series of efforts, as members of this committee know so well, to extend human and educational rights. And think about what people said when we wanted to extend those rights: the Civil Rights Act of 1964; title I of the Elementary and Secondary Education Act; title IX of the 1972 Education Amendments, and now section 504 of the 1973 Rehabilitation Act.

All the time we hear, "It is impossible, we cannot do it," and yet, once these laws begin to fall into place administrators learn that they can work within the law, they can serve the beneficiaries of the law. So, the lessons of the past are clear in that the extension of human and educational rights is not easy to achieve, but it is constitutionally required and just.

I think at this time I would like to defer to my colleagues at the table for their comments, in view of the short period of time.

Senator STAFFORD. All right, we will be glad to hear their comments, and we can assure you that your statements in full will appear in the record, without objection.

Mrs. FRANKL. I am Jeanne Frankl from the Public Education Association in New York, and very pleased to be here before this honorable committee.

The Public Education Association is a nonprofit organization engaged in influencing the course of public education; and we were the first to sponsor and institute education for the handicapped in New York City in 1911.

New York's handicapped children depend tremendously on effective implementation by Congress and BEH for Public Law 94–142. We are having a lot of problems meeting the principles of 94–142 in New York. They are already in our State law, and yet, we are far from the goal of full service; we have not done any real main-streaming; our handicapped children are still educated in special categorical programs; and we have waiting lists for evaluation and State mandated three year reexamination of more than 15,000 children.

Nevertheless, it is not public sentiment in New York that is accountable for this. We have model programs that are effective both in achieving full service goals, and in achieving main-streaming of children; and they have parent support and teacher support.

Our problem is a very bureaucratic system with a tremendous amount of resistance to the hard decisions of reforming and revising programs that 94–142 and our own legislative requirements mandate upon us.

PEA feels that congressional adherence to 94–142 just as it is, and strong support by Congress for a militant role by BEH in enforcing State and local obligations is essential to the welfare of New York children, to enable the professionals and parents to achieve their desires for the kinds of programs that you have in mind. 94–142 is a marvelous law, and one of the things that seems to be overlooked is that it already has phasing in, staggered compliance requirements and schedules for beginning to proceed toward the full service and other goals it requires.

Our annual State plan this year and the proposed State regulations, which PEA has criticized, and which have now been enacted substantially unchanged by our State education department, do not achieve the goals of 94–142, and do not meet the requirements that the new law mandates even for this very year.

Our child count provisions, our child find provision, our plans for programing are such bare bones of vague and ill-conceived, unrealized concepts that they give no hope of the State's proceeding, in succeeding years, toward the service and qualitative goals of the law.

What we think needs to be done right now is for Congress to give the go-ahead to BEH to insist, to exercise its powers to insist, beginning right now, that annual plans meet the requirements for planning and counting, and that the regulations adhere to the due process requirements, the IEP requirements, and the main-streaming requirements of the law.

We have submitted a statement. We will also submit for the record, if I may, our comments on the annual State plan and on the State regulations.

We are very grateful for the opportunity to address you.

Senator STAFFORD. Thank you very much.

Mr. BROWN. Senator Stafford, my name is Larry Brown. I am executive director of the Massachusetts Advocacy Center, which was instrumental in passage of the Massachusetts law upon which 94–142 is based in large part.

I will limit my comments to several issues that I have not covered in my written testimony.

Those of us who followed the development of 94-142 could have predicted, based on our experience, that we would be here today. I read the amendments, the proposed amendments, with some amusement and feeling of deja vu because 3 years before our law was to go into effect a coalition of local officials came to the Massachusetts Legislature and said that any number of problems would occur if it were not amended, if they did not provide for waivers, and postponements, and so on.

Fortunately the Massachusetts Legislature said, "Enough debate is enough, we will go forward; if there are problems we will deal with them later." To this day I think that wisdom is reflected in the fact that Massachusetts special education has made leaps and bounds, although we still have some problems. While I think we are leaders, as do many others, I do not think the leadership argument serves anyone well.

Three brief points. One is, several people today said, "We are leaders and everything is going well. We support the law—but." One of the people, without denigrating her testimony or her State, failed to say that her State was under court order to carry out some of the special education programs, and I am talking about Pennsylvania. I am not denigrating them, but I think we have to have the record very clear about what some of the impetus is behind progress that is being made: the point being that unless we are to have court order, after court order, after court order, we have to have Congress saying, "It is now time to educate handicapped children in our Nation, and we are not going to equivocate."

Second, some people have argued that the amendments are necessary because there is State-by-State diversity and difference. Clearly there is, but the whole point of having a rational, national public policy is to see that in this diversity young people, in this instance, do not fall prey to poor quality services in some States. So, the law does provide for diversity, but yet it also establishes national and rational policy. There can be no law that allows for every caveat, every State program and every State constitution.

Finally, there has been some feeling, apparently, that there is widespread opposition to the law, or support of the amendments. My State special education administrator yesterday called me, followed by a call from our commissioner of education, and said, "Larry, please point out to the subcommittee that there is not 100 percent unanimity between chief State school officers; and more importantly, the public officials who know most about the law: State education administrators refuse to go along with any request for amendments to this law."

In summary, I do not think that there is any reason at this point in time to amend the law. The question of due process procedures, where they are suggesting some amendments, I would only add that we must look at the experience we have in Massachusetts, whose due process procedures are far more stringent. And in fact, of all things, this area is probably working best in Massachusetts the equity and timeliness of handling administrative and appellate issues.

I urge you not to back down but continue your leadership. Thank you.

Senator STAFFORD. Thank you very much, Mr. Brown, and I want to thank all of our panel for the speed with which you got your message across; and I apologize for the constraints the Senate has placed upon us.

The record will be open for your full statements and supportive materials. There will be questions, and we would ask that they be responded to in writing.

[The prepared statements of Mr. Mizell, Mrs. Frankl, and Mr. Brown and additional material subsequently supplied for the record follow:]

Testimony Before The
Subcommittee on the Handicapped
U.S. Senate Committee on Human Resources

on
Public Law 94-142
The Education for All Handicapped Children Act

June 21, 1977

by
M. Hayes Mizell
Associate Director
Southeastern Public Education Program
American Friends Service Committee
401 Columbia Building
Columbia, South Carolina 29201

Mr. Chairman, my name is Hayes Mizell and I am Associate Director of the Southeastern Public Education Program of the American Friends Service Committee. The Southeastern Public Education Program is a Southern based national program of the Community Relations Division of the American Friends Service Committee. I am testifying today on behalf of the American Friends Service Committee and I speak for that Committee. However, no single body can speak officially for the Religious Society of Friends (Quakers).

For the past ten years the AFSC Southeastern Public Education Program has been working to assure that low-income and minority children have access to, and are the recipients of, the reality of equal educational opportunity. At the same time, we have also been working with the parents of those children to assure that they have opportunities to participate in the educational policy and program decisions which affect their children, and which determine the extent to which their children will be the beneficiaries of the educational system's promises of equity and quality.

We appreciate this opportunity to briefly comment on Public Law 94-142, the Education for All Handicapped Children Act. By now it is a truism that this law is of profound importance and of inestimable value to millions of children with handicapping conditions, and to their parents, because of the services it requires to be provided. But in our view the law is equally important for the protections it provides all children, and for the access to the educational decision-making process it provides to parents.

Because this law is of such importance, it is essential that it be allowed to work unencumbered before it is delayed by amendments which are based on hypothesis and speculation rather than on the realities of the law's implementation at the state and local level. We should remember that this law is the product of extensive staff work, committee hearings, floor debate, comment by a multitude of interest groups, and, of course, compromise at every level. In other words, P.L. 94-142 is the result of the effective working of our legislative and political system, and while both the law's strengths and weaknesses reflect that process, it nevertheless deserves the opportunity to be tested by prompt and vigorous implementation. While P.L. 94-142 is certainly not forever immutable, the fact is that we cannot know how well this law will work until state and local officials, working in good faith and giving priority to the real needs of children, devote their energy and attention to implementing the law as it was written.

Our experience is that it is not unusual for state and local officials initially to see laws which extend human rights and educational opportunities as administrative nightmares which will result in unresolvable dilemmas and traumatic departures from past practices. As a former school board member I am not unfamiliar with the seige mentality that besets local officials who are continually challenged by new laws and regulations which seek to remedy years of educational injustice and which therefore demand new and often difficult patterns of practice.

Certainly Titles II, VI, and VII of the 1964 Civil Rights Act were greeted with alarm by those who felt that law imposed unreasonable burdens at too great a financial and human cost. Even Title I of the 1965 Elementary and Secondary Education Act meant new and often administratively inconvenient initiatives to serve educationally disadvantaged children whose needs had been ignored for decades. More recently there have been complaints about the so-called impossible administrative burdens resulting from Title IX of the 1972 Education Amendments designed to rid educational institutions of sex discrimination. And of course we are only beginning to hear the swelling chorus of objections to the long-delayed requirements of Section 504 of the 1973 Rehabilitiation Act--essential companion legislation to P.L. 94-142--which will require fundamental changes in the way our society relates to handicapped individuals.

All of these laws required sweeping policy changes at the state and local level, new administrative initiatives, complex funding mechanisms, overturning institutional practices conceived in discrimination, and even significant capital expenditures. None of these laws were administratively convenient. Those who did not like either the substance of the laws or the administrative adjustments they required frequently found ways to thwart or pervert the intent of the laws in their initial years of implementation.

Thus, the lessons of the past are clear: The extension of human and educational rights is not easy, cheap, or convenient but it is just and Constitutionally required. Such laws will probably always upset those who are responsible for the difficult task of making the laws work. But now, as in the past, the immediate and effective implementation of these laws--particularly P.L. 94-142--must not be deterred by those who seek to change the rules, which all the players had an opportunity to help develop, before the first game is even played.

And of course it is ironic that as years go by, as state and local officials do, in fact, learn how to work within the new laws, they also begin to see more clearly the value of the effect of the laws. They learn that the laws, and the programs they foster, can be administered to successfully serve the beneficiaries of the law. In the end, most officials come to view the laws and the programs as essential components of the operation of their local school systems, and they vigorously resist challenges to the program's funding.

You must also know that these laws must be strongly enforced to benefit those they were designed to serve. This is clearly the first order of business for those responsible for P.L. 94-142. It is essential that this committee focus its primary attention on giving oversight and encouragement to the Bureau of Education for the Handicapped to assure the early promulgation of carefully conceived, precise, final regulations which will give practical guidance and direction to those who must implement P.L. 94-142 at the state and local level. Indeed, it can be argued that because of Congress' specific requirements in the law--Section 617(a)(2)(b)--that the U.S. Office of Education issue such regulations without delay, this committee must turn its attention to the issue of both the delay in the issuance of the regulations and what steps BEH intends to take to enforce those regulations. It is absolutely vital to children and parents that the energy of this committee be directed towards that end, not to reconsidering portions of this law which has yet to be implemented in local communities.

The absence of detailed and strong regulations and the lack of clarity as to BEH's intentions to initiate an effective monitoring and enforcement program means that many states and local communities may believe that it will be "business as usual" in implementing this new Federal law. That is to say that officials charged with making this law a meaningful reality for children may assume that in the implementation of P.L. 94-142, as has too often been the case with similar laws in the past, there will be a period of several years of confusion, delay, and lack of resources in the Federal agency responsible for implementing the law, and consequently there will be little, if any, effective monitoring and enforcement regarding state and local education agencies' qualitative compliance with the law.

Let me give you one small example. Section 617(7)(b) of P.L. 94-142 and Section 121a.20 of the proposed regulations make it clear that state education agencies must indicate in their annual state program plans that "there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, programs, and procedures..." Now this seems to be a simple requirement and it implies an assumption that state education officials are both inclined and know how to take steps to assure public participation in the development of the state's annual program plan under P.L. 94-142.

But on April 26, 1977, I attended such a public hearing sponsored by the South Carolina State Department of Education for the purpose of receiving public comment on the draft of its "Amended Annual Program Plan for Fiscal 1978 Under Public Law 94-142, Part 'B,' Education for All Handicapped Children Act." I would like to share with you how that hearing was conducted:

* The hearing was held at a suburban high school which is not accessible by public transportation. The school district in which the hearing was held has relatively few handicapped children when compared to a major urban school district with which the suburban district is geographically contiguous.

* When those attending the hearing entered the room they were handed a copy of the state's 149-page draft annual program plan and told that representatives of the State Department of Education would be happy to receive the comments of those attending the hearing.

* There were not enough copies of the draft annual program plan for the approximate twenty-five persons attending the hearing.

* There was no summary, discussion, or presentation by the State Department of Education staff present to explain or interpret the plan. No written summary or audio-visual aides were used.

* The State Department of Education staff present made it clear in their comments that they were not there to discuss or interpret the draft annual program plan but only to

assist those attending the hearing in submitting their written comments on the plan.

- Persons attending the hearing were told they could submit their comments only on forms developed by the State Department of Education. They were also told that they could take these forms with them and submit them by mail but that the forms would have to be in the State Department of Education on April 29, less than three full days after the hearing.

- In the newspaper announcement which gave the details on the time and place of the public hearing there was no indication that the draft plan could be obtained prior to the hearing. Thus, individuals attending the hearing were seeing the plan for the first time and were being expected to either comment on it at the hearing itself or had inadequate time to take the plan with them and study it and then submit comments.

- Copies of news releases contained in the draft state plan and designed to demonstrate the state's compliance with the law regarding public notice of hearings contained dates, locations, and other information which was at variance with the actual dates, locations, and other information relative to the hearings as they were actually conducted.

- On page 54 of the draft, Section VIII(A), "Procedural Safeguards," it was indicated that the State Board of Education had adopted policies to insure procedural safeguards, but those policies were not included on that page. Instead, the reader was referred to an attachment. However, the attachment was not included with the draft annual program plan. When an inquiry about this was made to a member of the State Department of Education present at the hearing, it was stated that a copy of the policy was not available at the hearing but a copy could be obtained at the offices of the State Department of Education.

- Those attending the hearing included both school officials and a few citizens who were disappointed that there was no substantive discussion at the hearing or explanation of the draft annual program plan. Since this was one of only three hearings held in the state simultaneously on the same day, some of the school officials had traveled distances in excess of fifty miles to attend this "hearing" which lasted about one-half hour.

On April 28, 1977, I wrote to Mr. Edwin Martin of BEH calling this hearing to his attention and providing him with the facts cited above. However, as of June 11, I had received no acknowledgement or reply to my letter.

This one example clearly indicates how officials can even comply with the letter of the law but fail to comply with its intent. Unless BEH issues detailed regulations which recognize this reality, and unless it takes forceful steps to develop and put into operation an effective monitoring and enforcement program, these and much more flagrant abuses of the law will become the norm during the next two years.

Public hearings on state program plans can be meaningful if State Departments of Education will develop a roster of persons and agencies in the state who are interested in the provision of free appropriate public education to handicapped children, and then use that roster to inform such persons and agencies about public hearings, make available to them copies of the state plans, and provide public hearings at which there can full discussion and explanation of the plan, accompanied by the use of illustrated or audio-visual materials. But most important, there must be an adequate period of time available to the public to receive the complete plan, study it, and provide written comments on it.

We respectfully urge the members of this committee to give their attention to how P.L. 94-142 can be made to work effectively now, without further delay. We urge you to assure children and parents that the Federal government has learned from the failures of past efforts to implement the legislatively mandated expansion of human and educational rights, and to demand that BEH immediately develop a strong enforcement program (closely coordinated with the Office for Civil Rights) which will make the promise of P.L. 94-142 a reality. There are certainly an abundance of temptations to tinker and tamper with this vital but untested legislation and to somehow perfect it to the satisfaction of all. But if this is the course you chose then those whom this law is intended to benefit will only be further denied and discouraged.

Thank you.

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TESTIMONY OF
THE PUBLIC EDUCATION ASSOCIATION
ON EDUCATION OF THE HANDICAPPED
BEFORE THE SUBCOMMITTEE ON THE HANDICAPPED
OF THE U.S. SENATE COMMITTEE ON HUMAN RESOURCES
HON. JENNINGS RANDOLPH, CHAIRMAN, JUNE 21, 1977

by

JEANNE SILVER FRANKL, COUNSEL

Tens of thousands of handicapped New York children are depending upon the promise of a free, appropriate public education in P.L. 94-142.

In 1973, a State ruling affirmed New York City's responsibility to meet the special needs of handicapped children. State legislation requires adherence to many other of the federal law's requirements. Nevertheless, neither the numerical nor qualitative goals are anywhere near being realized. With waiting lists for evaluation and reevaluation of children approaching 15,000, delays in placement of those already evaluated, and a lack of viable procedures for locating and diagnosing many in need of help, service levels fall grossly short of need.

Moreover, the service provided does not comport with federal and state standards. Responsive program planning is hampered by lack of parent involvement and meaningful due process. Indeed, the parent is often viewed as adversary rather than ally in the fight for appropriate educational service.

There are few examples in New York City of mainstreaming special education and virtually no long or short term plans for changing this picture.

These deficiencies in New York City performance cannot be ascribed either to inability to comply with P.L. 94-142 or public disagreement with its goals. Some New York City schools have progressed significantly in adapting their programs to special children's needs. Parent-supported models have been developed through the initiative of principals and teachers. These experiences prove that the objectives of P.L. 94-142 are shared by the public and professionals, and can be achieved.

Spurred by the mandate of federal law, New York City can get on the track to achievement. We are convinced that the inevitable start-up problems, some real, some needlessly self-imposed, need not impede implementation.

Despite a shared and deeply felt commitment to the education of handicapped children, our State and City educational administrators have not responded imaginatively or effectively to the challenge of the law. New York City's budget crisis has provided strong pressures to accommodate the plight of constitutiencies other than children: particularly teachers, administrators and others whose jobs have been threatened. When, as in New York City, teachers without experience or training in special education replace staff with these important qualifications on the basis of seniority, the goals of 94-142 are necessarily thwarted.

New York has taken a number of steps which may well make implementation of 94-142 more burdensome, more expensive and more difficult than need be. Instead of the essential revisions in program concept and protections which implementation of 94-142 requires, we have jerry-built a structure of "add-on" programs and cumbersome due process. New York has failed to reconsider traditional strategies for responding to the educational and educationally-related needs of handicapped children which are incompatible with the requirements and practical demands of 94-142. For example:

1. Aside from itinerant speech services, New York City's program for special education has always been provided

through separate self-contained classes or schools, centrally organized on the basis of certain "handicap" categories. Continuing and exclusive adherence to this method of delivering services is a roadblock to carrying out the most essential federal requirements:

a) The possibility of educating special needs children in the least restrictive environment appropriate to their needs is virtually eliminated.

b) Grossly inadequate attention is paid to creating and providing supplementary aids and supports which would permit retaining special needs children in their home schools. Needs unmet become intensified; the pattern of more restrictive, more expensive and less effective educational solutions continues.

c) Transporting youngsters to special locations, takes-up important instructional time and makes the program unnecessarily costly.

2. New York has responded narrowly and uneconomically to its increased service responsibilities which were already made burdensome by past defaults. Recent reports indicate that at least 7,500 New York City children in special education programs are awaiting State-mandated three-year reevaluations. Approximately the same number of children are awaiting initial evaluation. The wait for evaluation and then a special education class placement often amounts to a full school year.

New York City's response in the face of increasing pressure on limited resources has been counter-productive:

a) It has undertaken to reevaluate all current and resist all newly requested private placements. School officials argue, with contradictory data, that public school placements will save money. The actual effect has been to give over a lion's share of the system's evaluation efforts, available placements and due process time to contesting parental requests for perfectly suitable placements at the expense of thousands of other children for whom the school system is unable to provide necessary services.

b) Our educational leadership has not undertaken to coordinate with other agencies and take advantage of the potential financial and educational time savings entailed in permitting outside clinical or therapeutic facilities to perform evaluation services. This, despite the fact that many children have previously been evaluated by these agencies. The use of such resources now largely depends on the ad hoc initiative and personal relations of school personnel with these facilities.

3. State law has required New York City to develop

an elaborate due process system which is inconsistent with established federal law requirements. Moreover, this expensive undertaking is ineffective in protecting parental and children's interests:

a) There is a long chain of review and appeal as school officials reject the decisions of other school officials and parents appeal; and this is all before a due process hearing is convened.

b) Federal finality requirements are not honored; hearing officers under New York's scheme merely recommend to boards of education, which are free to accept or reject the findings.

c) Failure to provide for early parental involvement in planning and placement increases the incidence of contested proceedings.

Due process safeguards can indeed become unduly burdensome, but they need not. Were New York to implement 94-142's more efficient requirements, the interests of parents and professionals would be more fairly served.

All this adds up to a clear need for Congressional adherence to the usually foresighted, and specific educational mandates of P.L. 94-142.

In discussing Massachusetts' experience implementing its own special education reform legislation, writers in the Harvard Educational Review said that the law "gave legitimacy" to long-held conceptions of many Massachusetts educators.* The authority of firm and detailed guidelines permitted these principles to prevail despite the pressures of strict timetables, low budgets and overwork.

Observers agree that there is similarly broad-based support across the country for the premises of 94-142. A strong law and its vigorous enforcement will give State and local school administrators backing for the analytic work, decisions regarding conflicting interests, and reform of existing procedures necessary to institute full service, mainstreaming and individual education planning for the handicapped children in our City.

On the other hand, our experience in New York indicates that to the extent that federal lawmakers waiver or are perceived to waiver--to the extent that compliance requirements or timetable seem to be in doubt--local school systems, like our own, will lack the necessary incentive to overcome the bureaucratic obstacles which traditional but discredited practices place in the path of implementation.

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*Richard Weatherley and Michael Lipsky, "Street-Level Bureaucrats and Institutional Innovation: Implementing Special-Education Reforms," Harvard Educational Review 47(1977) 171-197.

Requirements which have been strongly protested are among those demanding most steadfast Congressional support. For example, the individualized education plan _must_ be seen as a legally binding document. Not as a contract to bring an individual student up to specific achievement levels; we regard as spurious, the notion that that is the issue. But Congress must not repudiate the laws indisputable intent as confirmed by BEH in its discussion of proposed regulations, 41 Fed. Reg., No. 252, 12/30/76, p. 56970, that the State is responsible for providing the services delineated in the IEP.

Otherwise, it will be too easy to withhold needed service on the grounds of cost and inconvenience. There will be no motivation to revise old segregated programs, institute new resource adjuncts to mainstream classes and revamp teacher assignment and training programs to solve the administrative problems of mainstreaming. The extensive investment of time, energy and intellect to determine a child's real needs and the best way of meeting them will be wasted, and the concepts of individualized planning, full service and education in the least restrictive alternative will all go by the board.

Adherence to the federal law's due process requirements is no less fundamental than IEP enforcement. The provision for _finally_ determining the child's rights before an _impartial_ hearing officer gives the IEP concept its clout. Only a hearing officer completely independent of the system can be expected to make an independent determination of a child's programmatic needs. This independence must not be jeopardized either by permitting school system employees to serve in the examiner positions or by permitting states to subject hearing officer decisions, as our State has done, to board of education veto.

Opponents of full implementation raise many concerns about the execution of these concepts. The legitimate questions they present must be answered. For example, we heartily agree with the view expressed by teachers and their unions that thorough training and retraining for regular classroom teachers, specialists and administrators is essential to mainstreaming and individualized planning. There are many unanswered questions about how to provide and finance such training without impairing ongoing classroom work or unfairly burdening professional staff. The answer, however, is not to relax even temporarily the programmatic requirements which necessitate the new training programs and raise the questions but rather to persist in mandates which press for answers.

Of course, useful pressures cannot mean imposing deadlines without sufficient aid to the job.

The financial promises of the new law should be fully met. We agree with others that Congress must appropriate amounts fully commensurate with the staggered 94-142 authorizations. Anything less will generate justified feelings of betrayal, lose support for the legislation's principles and short-circuit enforcement activities.

Financial support is not enough. Our experience in New York demonstrates the need both for substantial technical assistance and authoritative moral and legal support to assist local people who want to comply with the law's requirements. This must emanate initially from a strong Congressional policy compelling effective enforcement by BEH of state planning, monitoring and supervisory obligations.

One of 94-142's impressive characteristics is the delineation of enforcement responsibility running from BEH to the states and the LEA's. Another, is the carefully conceived schedule for phasing-in compliance obligations.

The 1975 law deferred full-service requirements until 1978, and in some cases, 1980, while mandating that procedures for determining service needs through child find, child count, program inventory and individual evaluations be initiated first. Provisions regarding State Annual Program Plans and LEA applications, further call for preparation of detailed program plans before full compliance target dates. Designed to realize the law's substantive mandates, these are to give "assurance" of state commitment and capacity on such crucial obligations as individualized education planning, full service of special childrens' needs in the least restrictive environment and adequate personnel training. States are required to initiate such start-up planning activities and/or monitor local performance. BEH may enforce these obligations by declining to approve Annual Plans and withholding funding.

The procedures for phased-in compliance and sanctions provide a workable basis for federal enforcement. Action this year to compel and help states comply with this year's obligations will lay a foundation for compliance with those that accrue in succeeding years through the 1980 full-service date. The recurrent phenomenon experienced in connection with Title I and other legislation, of waiting to investigate and proceed against states or LEA's until the situation has become too murky and complicated to deal with can be avoided.

The recent submission of state child counts highlights the importance of initiating prompt enforcement measures. Nationwide experience is that the counts fall far short of the numbers of eligible children thought to need a free appropriate education. Yet, if New York's draft Annual Plan is typical, plans for improving child find and developing evaluation procedures and programs for serving an expanded population with appropriate, and thus reimbursable services fall far short of the specificity and implementation required for this year. Unless BEH challenges these inadequate compliance measures now, the needed foundation for next year's more substantive compliance obligations will not be laid.

Implementation is still at a stage when states can feasibly be expected to elaborate and revise their present plans to achieve substantial compliance. While that remains the case, BEH should impose effective pressure coupled with technical assistance to obtain negotiated revisions of present rules, regulations, plans and procedures.

The potential of 94-142 is great. Congress should see that there is no waffling. BEH should have a green light to stimulate and inspire a maximum state effort to plan and execute the decisions necessary to fulfill the law's promise.

Public
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THE PUBLIC EDUCATION ASSOCIATION

A nonprofit organization of parents and citizens concerned with improving public education in New York City

IN 1976-1977, the Public Education Association is concentrating its skills and resources on activities that can improve the education of New York City's 1.1 million public school children now, despite the serious fiscal crisis.

PEA'S PROGRAM will focus on

Priority Budgeting and Productivity: Allocation of available dollars to the most educationally productive uses, with classroom instruction given top priority.

More Balanced Collective Bargaining: Greater representation of the public and of children's interests; public knowledge of the full costs and educational consequences of proposed contracts before they are agreed to; greater concern for the effect of contract provisions on school operations.

School-level Management, with Quality Staff: Emphasis on flexibility, resourcefulness, and accountability at the school level and better procedures for licensing, appointing, and evaluating staff.

Changing the Educational Delivery System: Development of a system with greater responsiveness to the needs of individual children, more options and alternatives, more extensive use of community resources, and greater integration of youth-serving agencies.

THE ASSOCIATION is currently carrying out its work through

Citizen Action: PEA's position on major education issues is defined in relation to children's interests. Playing an active advocacy role in its effort to improve education, PEA backs up leadership in citizen action with research and analysis--through the Association's own varied activities and through joint action with individuals and other parent and civic agencies (for example, PEA helped to form the Educational Priorities Panel, a coalition of 16 of the city's major organizations, to press for changed education budget priorities and policies).

Legal Action: A legal action program enables PEA to apply its combined legal and educational expertise in negotiating reforms in such areas as professional staff licensing and appointment, seniority and excessing, child advocacy, community school board elections, and the like. The capacity to litigate adds clout to PEA's advocacy efforts both in and out of court.

Public Information: The Association's publication, PEA REPORTS, [illegible] information, analysis, and opinion on a wide range of education [illegible] continues to be sent to thousands of parents, school and community people, government officials, and citizens, in addition to PEA members. For many readers, PEA REPORTS is the main source of reliable information on [illegible] to base their own efforts to improve public education. The Association is also continuing its efforts to reach a broader public through the media and through public meetings, hearings, and forums.

FOUNDED IN 1895, as part of the great, turn-of-the century reform movement, the Public Education Association was chartered by the state as a nonprofit, nonpartisan citizens organization for the improvement of public education. It is not part of the Board of Education or any government agency. PEA members include community leaders, parents, educators, and other concerned citizens. The Association's policies are set by a Board of Trustees. In accordance with its credo that "the public schools are everybody's business," the Association works for better public education through the activities of interested citizens as well as through its professional staff. Funding for the Association comes from its membership, contributions, and foundation grants.

PEA's RECORD reflects an effort to focus resources on activities that will contribute most to better-quality public education. In the early days the Association fought for consolidation and professionalization of the school system. It established the first parents association, in the belief that parent involvement is essential to quality education. It pioneered the first hot lunch program and the first prison education program. It fought for special education for handicapped children and youth in trouble. Later PEA set up the All-Day Neighborhood School program (a prototype for some of today's community education programs) and the School Volunteer program (a focal point in saving many special services in today's fiscal crisis). It has concerned itself with racial discrimination, teacher training, curriculum reform, drug education, career education, and decentralization.

PEA LOOKS AHEAD PEA views the serious and unequivocal character of the city's fiscal crisis as a challenge that will force a search for creative and productive solutions to old problems. No longer able to fall back on the cushion of more money, many New York City public school parents, staff, and concerned community people can, PEA believes, unite, school by school, community by community, to help their children. The Public Education Association brings together people who firmly believe that New York City, with its tremendous human and material resources, can and will improve public education, despite the fiscal crisis, and that PEA's program and activities will contribute substantially to the achievement of this goal.

PEA MEMBERSHIP: PEA seeks members--citizens with or without children in public schools who care about quality public education and are willing to work for it, either through direct involvement in reform efforts or through financial support of the Association's work. Annual membership dues are $15, though many people contribute more. The Association could not carry on its work without the generous contributions of its members. To stay informed about important developments in New York City education, PEA members can, if they wish, receive PEA REPORTS at no extra charge. They may also become involved in a variety of programs and actions to bring quality education to the people of the city. Citizen action is the key to quality education.

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February 1, 1977

Dr. Bernice M. Kipfer
Assistant Commissioner for Education
of the Children with Handicapping Conditions
55 Elk Street, Room 210
Albany, New York 12234

Dear Dr. Kipfer:

Advocates for Children of New York (AFC) and the Public Education Association (PEA) are pleased to respond to your invitation to comment on the Regulations of the Commissioner of Education, New Part 200 Subchapter P Handicapped Children, effective January 1, 1977 (hereinafter New Part 200).

Advocates for Children of New York serves New York City children with special education needs or school related problems; approximately half the 3000 children it has served have been handicapped.

AFC's programs include an advocacy service which provides free representation to children and their families, most of them poor, and many from minority groups, in obtaining appropriate educational and related services. Since 1970, AFC has represented children in such matters as suspension hearings, placement proceedings (including representation before Committees on the Handicapped (COH) and at due process hearings) and appeals to protect the confidentiality and accuracy of student records. Advocates for Children also administers direct service programs which include a State approved school for emotionally handicapped children (the Martin de Porres School) and a group home approved by the New York City Department of Social Services (the Martin de Porres Group Home).

The Public Education Association was chartered by the University of the State of New York in 1899 to investigate and make recommendations with regard to the condition of public education in New York City. In carrying out that objective, it has concentrated and gained widely acknowledged expertise on problems of administration and institutional structure bearing on effective classroom education. Recently its charter was amended specifically to authorize legal action.

PEA became interested in the problems of special education as early as 1911, when it initiated efforts to open New York City's public schools to handicapped children then exempt from the compulsory education law. Its legal and other staff are currently working with experts in special education including Advocates for Children on a special project to assure effective implementation of the principles established by New York Education Law, Article 89 and the federal Education of All Handicapped Children Act.

We suggest that the combined experience and background of AFC and PEA afford us particular expertise in assessing New Part 200.

COMMENTS - OVERVIEW

We wish to emphasize initially agreement and support for some of the January revisions of the Commissioner's Regulations reflected in New Part 200. The most important of those with which we concur are the provisions in Section 200.4(a) which mandate that students be educated in the "least restrictive environment". We welcome this addition, which brings the regulations into essential conformity with federal requirements as well as sound public policy. We urge that the provisions be enforced vigorously whether the student's individual needs require attendance in a regular class with supportive services, placement in a special class in a regular school with maximum participation and use of the school's resources, or placement in an alternate educational setting with maximum opportunities for participation in the mainstream of society.

We also support changes which promise improved efficiency and reduced costs for school districts, as well as benefit to handicapped students, i.e.:

> Change in Sec. 200.1(c) which now provides that during the summer months "days" will mean "work days" rather than "school days," a change which will mean that evaluation, placement, and due process procedures will not come to a halt over the summer months;
>
> Change in Sec. 200.1(g) & (1) which permits use of outside clinical resources for evaluation purposes.

In addition, we support the changes in Sec. 200.4(f)2(ii) which permits parents to request the presence of persons of their choice at the Individualized Education Program Conference; this will afford a needed safeguard for handicapped children and their parents.

Despite our agreement with these constructive revisions, it is our view that the proposed regulations remain incomplete and insufficient and cannot be approved without substantial amendment and supplementation. An overriding consideration is the failure to implement, or even comply with relevant federal legislation.

New Part 200 must be assessed against the background not only of Article 89 of the State Education Law to which it expressly pertains, but also pertinent federal enactments including Part B of the Education of the Handicapped Act, as amended by PL 94-142 and Section 504 of the Rehabilitation Act 1973. The second of the two federal laws mentioned is effective currently; the provisions of the Education for All Handicapped Children Act take effect less than a year from now. Compliance with these measures is crucial for New York State, if only because it is prerequisite to eligibility for substantial potential contribution of federal funds to state and local programs of special education. Moreover, Section 504 of the Rehabilitation Act, particularly, imposes affirmative requirements, defiance of which constitutes actionable discrimination against handicapped persons.

It is clear that the new State regulations regarding education of handicapped children must comply fully with these federal requirements. They should also contain all rules and regulations which the State is required to enact and impose on local educational agencies as a condition of its own or their eligibility for assistance. In fact, the proposed state regulations do neither. As shown in detail below, they actually conflict in many places with specific federal provisions. Moreover, they omit procedures, assurances, and guarantees within the scope of state regulatory responsibility under the Federal Law.

We appreciate that this has been a time of rapid legislative development in the area of special education. However, we believe it would be senseless to promulgate final state regulations which did not take account of developments to date. Given the difficulty of changing permanent regulations, it would be better to continue the status of any incomplete or questionable regulations, as "emergency" measures.

Moreover, we believe that it should be possible, without undue delay, to formulate valid and adequate regulations based on presently available guidelines. The Education of the Handicapped Act, as amended by PL 94-142 is specific and detailed. Moreover, on December 30, the Department of

Health, Education and Welfare issued proposed implementing regulations. Designed to be "minimal," these track the congressional language to a large degree. The Preamble (Volume 41 F.R. 56966) specifically identifies those few provisions which attempt to "interpret, clarify or implement" rather than simply repeat specific requirements of the Act. Thus, new State regulations can be formulated fully to carry out federal requirements without awaiting final federal regulatory action.

Accordingly we urge that before they are approved by the Regents the New Part 200 Regulations be reviewed and modified so that they minimally fulfill federal requirements and integrate the federal and state schemes in the following primary areas of concern:

1. The Individual Education Program (IEP) and IEP conferences;
2. The Committee on the Handicapped (COH);
3. The due process hearing and review procedures;
4. The failure to integrate the federally mandated IEP and due process procedures with the State created COH mechanism.
5. The application in general of the regulations to all publicly funded programs providing education programs for the handicapped (e.g. institutional programs, day treatment centers);
6. The failure to include regulations providing for safeguards in evaluation and testing procedures;
7. The failure to include provisions regarding the confidentiality of records; and
8. The failure to provide in any manner for the education of students with specific learning disabilities.

Our comments are organized as follows: in Part I we will clarify our objections and recommendations on these basic issues; in Part II we will state additional comments in the sequence of New Part 200.

PART I

A. Individualized Education Program (IEP) and IEP Conference (Section 200.4(f))

The single most important deficiency in the proposed regulations is the treatment of the individualized education program, a crucial element of the federal scheme which is undermined by the Commissioner's proposed regulations.

Under P.L. 94-142, the IEP is the reference document for determining compliance with the rights of each individual child. The free appropriate public education which States are required to provide each child under the Act is defined as special education and related services provided "in conformity with the individualized education program required" by the law. 20 U.S.C. § 1401(18). It is plain that the law contemplates development of the IEP in advance of a child's placement, in a meeting which is a crucial part of the placement process. See also 20 U.S.C. § 1414(a)(5). Thus, the proposed federal rules state that for a handicapped child who is not receiving special education, "a meeting must be held within thirty days of a determination that a child is handicapped or***will receive a special education" while the child already being served must have his IEP reviewed in a meeting held early enough so that the individualized education program is developed (or revised, as appropriate) by the beginning of the next school year." (Proposed Rules § 121a.222.)

The federal law also identifies as participants in the conference persons appropriate to develop an individualized program which adheres to the law's requirement of fully adequate service in the least restrictive environment; i.e., not only the child's teachers but a representative of the local educational agency with an overview of the system's duties and facilities to provide such an education. 20 U.S.C. § 1401(19). In provisions regarding the contents of the IEP too, the law defines its character as a document which will fully assess the child's capacities and potential and the "specific educational services to be provided" the child. Ibid.

New Part 200 (Sec. 200.4(f) turns the federal plan on its head. Provisions with respect to the IEP meetings' timing, their participants and their subject matter transform the contemplated pre-placement planning meetings into little more than parent-teacher conferences. A meeting held, as the regulations would provide, "no later than thirty days after the child enters the special education program" (emphasis supplied) cannot possibly serve as an exploratory session to determine the child's service needs or consider the range of settings in which they can best be met. The provisions limiting required school representation to the "pupil's teacher" (Sec. 200.4(f)2(ii)) as well as the provisions on IEP content (Sec. 200.4(f)1) confirm that the role contemplated for the conference is extremely narrow.

Quite apart from its non-compliance with federal law, this limited concept of the IEP is bound to be counterproductive. Held after the fundamental placement decisions are made, the IEP meeting offers neither parent nor teacher an option to influence institutional action in relation to the child. It simply adds another step to due process procedures without any potential for expediting the resolution of real disputes regarding the child's educational needs. From the teacher's standpoint, it thrusts on him the responsibility for dealing with the parent on the basis of a document that seems to demand accountability for performance, in a conference which assures no access to those who could assess or remediate service inadequacies beyond the teacher's control. This is squarely contrary to the apparent federal intention, reflected in the proposed federal rules, that the IEP commit the system to the provision of full service, but not commit the system, and certainly not the individual teacher, to assuring achievement of individual educational goals (Preamble 56970,72).

In our view, the regulations should seek to maximize the potential of IEP meetings as a means of interposing an accomodating, conciliatory process between the discovery by parent or teacher of an unsatisfactory situation and nonnegotiable decisions about the educational handling of the child. There are a number of good reasons consonant with the intention of 94-142's sponsors for taking this view of the IEP. One is the importance of creating an atmosphere in which all significant participants in a special child's future share a common interest and commitment to serving the child's welfare in accordance with the principles and goals of the new federal law. We do not believe anyone can educate in an atmosphere of hostility to mandated requirements. If every decision is made under pressure of actual or potential litigation, no educational progress can be expected to take place.

Moreover, a failure to institutionalize mechanisms for building consensus and cooperation which are genuinely mutual, and not coerced, will ultimately subvert the law's valuable, innovative due process procedures. If these are to gain support and thus be continued and implemented without challenge in the near future, they cannot become pro forma. Measures must be provided which make them an instrument of last resort. The law and regulations identify the IEP development and review conferences as the natural, appropriate mechanism for this purpose.

To meet these objectives and comply with federal law, New Part 200 must be amended to correct the timing of the IEP conference and assure that it includes appropriate participants. Provisions for appropriate notice of subsequent full due process rights including the right to representation at the conference should also be included to maximize the opportunity for genuine, uncoerced participation of parents at the planning conference. Finally, the content of the plan must be redefined to reflect federal requirements. These amendments are more specifically described as follows:

1 - Timing

The last sentence of the Sec. 200.4(f) introductory paragraph should be amended and supplemented as follows:

> Within thirty days of a determination that a child is handicapped, or that a child will receive special

education, a conference will be held to develop an individualized education program for such child. The individualized education program shall be reviewed, and if appropriate, revised periodically, but not less than annually. The IEP shall not be reviewed or revised except at a planning conference pursuant to this section, or as the result of an appeal pursuant to Section 200.5. The parent shall be provided with the opportunity for a planning conference whenever the parent requests a change in the child's educational program or the services provided, or the school officials propose such a change.

2 - Participants and Parent Representation

Sec. 200.4(f)2(ii) should be amended to include the following participants at the IEP conference:

1) an LEA representative, possibly a member of the Committee on the Handicapped or a designee of that Committee, who is qualified to provide or supervise the provision of special education;

2) the child's teacher or teachers, special and regular, who have direct responsibility for implementing the child's IEP;

3) where the child has not previously received special education, a teacher to whose regular class the child would be assigned if not for the handicapping condition;

4) one or both of the child's parents or a legal guardian or where the parent or guardian is unable to attend, a parent designee;

5) where appropriate, the child;

6) other individuals, at the discretion of the parent or agency.

3 - Notice

Sec. 200.4(f)2(ii) should be amended to include the following paragraph:

At least five days prior to the holding of any IEP conference, the parents shall be advised by written notice of their rights under this section (Sec. 200.4(f)) and of their due-process appeal rights under Section 200.5.

4 - Content of IEP

Sec. 200.4(f)1 should be amended to include the items set forth as follows in Prop. Rules 94-142 §121.225:

(a) A statement of the child's present levels of educational performance, including academic achievement, social adaptation, prevocational skills, psychomotor skills, and self-help skills;

(b) A statement of annual goals which describes the educational performance to be achieved by the end of the school year under the child's individualized education program;

(c) A statement of short term instructional ojectives, which must be measurable intermediate steps between the present level of educational performance and the annual goals;

(d) A statement of specific educational services needed by the child (determined without regard to the availability of those services) including a description of:

  (1) All special education and related services which are needed to meet the unique needs of the child, including the type of physical education program in which the child will participate, and

  (2) Any special instructional media and materials which are needed;

(e) The date when those services will begin and length of time the services will be given;

(f) A description of the extent to which the child will participate in regular education programs;

(g) A justification for the type of educational placement which the child will have;

(h) A list of the individuals who are responsible for implementation of the individualized education program; and

(i) Objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. (§ 121a.225)

B. Committees on the Handicapped (Secs.200.3; 200.5)

Committees on the Handicapped can and should serve as a vital bridge between the federally mandated IEP and due process procedures. Unfortunately New Part 200 fails to integrate the Committees into this sequence in a coherent and efficient way; as a result the function and appeal authority of the Committees remain confused and either duplicative, or contrary to the necessarily overriding federal scheme.

We believe that this essential integration can best be accomplished if the IEP conference group is organized to be a school-based team of the Committees on the Handicapped. Thus we have suggested, above, that the LEA representative to the IEP conference required by PL 94-142 might be a qualified member of the District COH.*

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*New York City local Committees have already been constituted corresponding to the community school districts but appointed by the central board. Chapter 853 of the New York State Education Law specifically, and in our view correctly, vests community school boards with specific responsibility in this regard.

Because Section 200.3 fails to adopt the language of the statutory provision upon which it is based, problems of interpretation seem inevitable, and we believe Section 200.3(c) should be amended to remove any ambiguity. We expect to comment further in this regard; in these comments we have chosen to focus on those aspects of provisions regarding Committees on the Handicapped bearing directly on compliance with federal law.

In order to coherently integrate IEP, COH and due process procedures, Sec. 200.5 should be amended to provide that whenever the COH, following a convening of the IEP conference, either proposes to initiate a change or refuses to initiate a change in identification, classification, placement or the provision of a free appropriate public education and the parent disagrees with the decision to change or the refusal to change, the parent or legal guardian shall have the right to address the committee either in person, through a representative or in writing, on the propriety of the Committee's recommendation as to any of the above mentioned matters. However, where a parent opts to proceed directly to an impartial due process hearing appearance before the COH would be waived.

C. Procedural Due Process (Sec. 200.5).

The provisions on due process raise two fundamental problems. The first is inherent in the failure of the regulations as a whole to adequately set forth the process by which initial and on-going placement decisions are made. As indicated supra, the IEP process in P.L. 94-142 directs that these decisions are to be made initially through a consultation process involving the child's parents with appropriate school and LEA personnel. Moreover, the Guiffreda Law itself requires that initial COH recommendations reflect parental contributions. Education Law §4402.1.b(3)(a). Thus, prior to making its recommendations, the COH is required to "review and evaluate all relevant information including but not limited to that presented by the parent, guardian, and teacher, pertinent to each handicapped child..."

Sec. 200.5(a) suggests the need to give parents an early role but defines this role in a confusing and ambiguous way which could be read to endorse current New York City procedures which make staff decisions preceding consultation fait accompli. Thus, on the one hand, Sec. 200.5(a) states that a COH which has "reason to believe" that provisions for a child should be changed must afford the parent an opportunity to address it. Inconsistently, it then indicates that committee recommendations will precede this parental appearance. Moreover, the provision for parental appearances does not expressly apply in the case of a child entering either a special education program or the school system generally for the first time.

Section 200.5 also fails to include any of the provisions necessary for agressively enlisting parental attendance which the federal regulations regarding IEP meetings recognize as essential to facilitate parental participation. Finally, this and other provisions regarding both initial and subsequent placement suffer from the second defect of the basic due process regulations as a whole, discussed next, in failing to provide for initiation of procedures by parents as opposed to school or COH personnel.

The due process provisions impermissibily restrict the opportunity for a hearing to those occasions when school officials through the COH propose a change in identification, evaluation or placement or where on annual review, the COH recommends a continuation of placement. In direct contrast, P.L. 94-142 specifically provides that parents shall have an opportunity to present complaints with respect to any matter relating to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education (20 U.S.C. §1415(b)(1)(E) emphasis supplied) and that when such a complaint is raised, "the parents or guardian shall have an opportunity for an impartial due process hearing." 20 U.S.C. §1415(b)(2). The legislative history of P.L. 94-142 demonstrates a clear Congressional intent that the hearing process be available when school officials fail to act on parentally raised complaints. The Senate Conference Report No. 94-455 pertaining to S.6 (2.U.S. Cong. & Adm. News. 75p. 1502) emphasizes the right of complaint and appeal by the parents concerning "any matter" and of notice of due process rights whenever the educational agency "refuses" to undertake action "such as the denial of special education and related services" (emphasis in original). The legislative intent is carried forth in P.L. 94-142 Prop. Rules, Sec. 121.406, and is mirrored in the 504 Prop. Regs, Subpart H).

New Part 200.5 requires amendment to remedy these two basic defects. In addition, it should be amended at various points to assure that all due process requirements are met. For example, the New Part 200.5 regulations are imprecise and incomplete in provisions for giving parents notice of the full range of their procedural rights.

We are also concerned that New Part 200 allows for procrastination and delay by school officials in carrying out the impartial hearing and appeal.

P.L. 94-142 clearly contemplates that due process hearing and review will be available expeditiously - Sec. 615(b)(2) provides that "(w)henever a complaint has been received...the parent or guardian shall have an opportunity for an impartial due process hearing...". (emphasis supplied). The P.L. 94-142 Prop. Rules carry out that legislative purpose by requiring under Sec. 121a.412 that both the hearing and administrative review on appeal of the hearing be completed no later than 45 days after receipt of a complaint.

Dilatory implementation of the fair-hearing appeal will be seriously injurious for many children, for whom the status quo may itself be harmful. Problems of delay also threaten to jeopardize the underlying evaluation and placement process itself.

In accord with our previously expressed concerns relating to delay in the evaluation and placement and appeals processes we strongly support Sec. 200.5(d) setting a maximum 60 day time limitation on the evaluation and placement process. However, there must be a meaningful enforcement mechanism for effectuating this requirement. A parent should not be relegated to the expensive and delaying task of instituting legal action to force school officials to comply with the 60 day limitation.

Finally, although New Part 200 explicitly provides that the pertinent requirements of Part 200 are applicable to State Schools, and to private schools within and without the State which provide services to New York State handicapped children at public expense, New Part 200 is silent as to how the standards set apply to other programs, which include, by way of illustration, day and residential treatment centers administered by the Department of Mental Hygiene, the Youth Services Agency, and the Department of Social Services, as well as hospital and institutional settings.

P.L. 94-142, Sec. 612(6) requires as a condition of receiving a grant under that Act that:

"The State educational agency shall be responsible for assuring that the requirements of this Part are carried out and that all educational programs for handicapped children within the state including all such programs administered by any other state or local agency, will be under the general supervision of the persons responsible for educational programs..." See also §504 Rehab. Act HEW comments, Prop. Rules 94-142, 41 Fed. Reg. p. 56967 (July 16, 1976).

Based on the foregoing analysis, we have concluded that Sec. 200.5 should be substantially amended. We will not attempt here to suggest specific language to accomplish all the necessary modifications but rather to summarize those changes:

Sec. 200.5 should be amended to provide:

1) That all pupil programming and placement decisions, whether required by school system, COH or parent initiatives and at whatever stage of a pupil's pre-school or school progress shall be preceded by a meeting involving at least those persons required to participate in an IEP meeting under the federal law and convened in accordance with the federal provisions for notifying and facilitating attendance of parents or their representatives;

2) That, in conformity with federal requirements, due process procedures be available not only in response to COH placement decisions but whenever school officials refuse to initiate a change requested by the parent or whenever the parent has presented a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate education to such child;

3) That notice and prior consent are required before any individual evaluation or testing of a child (see Prop. Rules 94-142 Sec. 121a.404) whether by the COH or any other school officials;

4) That written notice be afforded to the parent whenever school officials propose to initiate or change or refuse to initiate or change the identification or evaluation or the educational placement of the child or provision of a free appropriate public education (PL 94-142, Sec. 615(b); Prop. Rules 94-142, Sec. 121a.404(1)(2));

5) That the written notice provided for be defined to include notice of the full scope of parental due process hearing and review rights as well as a list of agencies from which parents may obtain an independent evaluation and/or from which they may obtain legal and/or advocacy assistance at the IEP, COH or other due process proceedings and, in addition, the following, as appropriate:

   a) That all relevant records pertaining to identification, evaluation, and educational placement will be available for inspection and interpretation by parents and for duplication by them at reasonable cost. (To restrict the review of records to school records is in conflict with PL 94-142, Sec. 615(b)(1)(A));

   b) Where the proposed action is in regard to placement the notice should include the specific program placement under consideration, and the school or facility in which the placement is located; the opportunity to inspect that program (giving the parent the address of the facility, the name and telephone number of the person to contact to schedule the visitation); and that they may bring an advisor when they make the visitation;

6) That where school officials fail to offer an appropriate program for the child within the period prescribed by Sec. 200.5(e) the child's placement should be approved in an appropriate special service or program provided for under Section 4401(2) of the Education Law which is requested by the parent and which agrees to accept the child.

7) That time limits be set for the scheduling of due process hearings and any other proceeding following a parental complaint or request for action. Time limits for state review are also essential. Moreover the provision for submission of the recommendation of the impartial hearing officer to the board of education for its decision at Sec. 200.5(d)(13) must be amended, since as written it appears to be in direct conflict with PL 94-142 Sec. 615(e)(1) providing that the decision of the impartial hearing officer shall be final unless appealed.

8) That provisions assuring due process protection are applicable to all publicly funded programs which provide educational services. These safeguards must at a minimum include IEP, COH and impartial due process hearing and state review procedures, confidentiality protections, due process suspension protections equivalent to Sec. 3214 of the Education Law and requirements prohibiting parents from being required to pay for tuition, maintenance or related services furnished by the agency or program in furtherance with the State's obligation to assure a free appropriate educational program to a handicapped child.

* * *

Finally, New Part 200 is inexplicably silent on two matters essential to full procedural due process where the federal law specifically imposes affirmative obligations on state and local agencies and requires state assurances; omitted are both non-discriminatory evaluation procedures and confidentiality protections.

a. Non-discriminatory evaluation procedures. Federal protections against discriminatory evaluation procedures have been in effect since 1974 under PL 93-380. As strengthened by PL 94-142, Sec. 612 (5)(c), they now require that the State establish:

> "[P]rocedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the

sole criterion for determining an appropriate educational program for a child."

The importance of such protections has been highlighted by the recent finding of the Office of Civil Rights, Department of Health, Education and Welfare that the minority students in the New York City public schools have been and continue to be segregated in special education classes and over-enrolled in classes for the mentally and emotionally handicapped.

New Part 200 regulations defining the classification of handicapped children not only fail to provide nondiscriminatory safeguards but conflict with the Federal Law by using I.Q. test results as the criterion for classification in some mentally retarded categories.

New Part 200 should be amended to include the following specific requirements, set forth identically in the PL 94-142 Prop. Rules(§121a.430 - 121a.433) and the Prop. Regs. §504 Rehab. Act (Sec. 84.36(c)) that:

(1) Tests and similar evaluation materials are provided and administered in the primary language of the student;

(2) Tests and similar evaluation materials have been properly and professionally validated for the specific purpose for which the recipient proposes to use them;

(3) Tests and similar evaluation materials are recommended by their producer for the specific purpose for which the recipient proposes to use them, are administered in conformance with the instructions provided by their producer, and are administered by trained personnel;

(4) Tests and similar evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(5) Test selection and administration is such that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors which the test purports to measure);

(6) No one test or type of test or other means of evaluation is used as the sole criterion for placement;

(7) Information from sources other than ability or achievement tests, including information concerning physical condition, sociocultural background, and adaptive behavior in home and school, is gathered and considered and the weight given to each of these sources is documented; and

(8) If the information derived either from ability and achievement tests or from other sources results in a showing that the student does not, because of handicap, need instruction in a special setting, the student will not be placed outside the regular instructional setting.

b. Confidentiality. Specific safeguards on confidentiality are required in PL 94-142 Sec. 612(2)(D) and the 94-142 Prop. Rules Secs. 12.a.450-121a.466 issued in final form Feb. 27, 1976 (41 Fed. Reg. 8603 - 8610). In compliance with the above, they are also provided in the New York State Amended Annual Program Plan Under Part B, Education of the Handicapped Act (1976 State Plan). However, the failure to include the confidentiality provisions in these regulations is a serious deficiency in the overall State scheme for protecting the rights of handicapped children and their parents.

The confidentiality protections, particularly the right to review and appeal from record entries are intrinsically related to the due process procedure. Yet the specific confidentiality regulations included in the 1976 State Plan are largely unknown to parents, students, or even most school personnel. Public dissemination through inclusion in official state regulations is essential if the safeguards are to have substantive meaning. This is particularly true since the 1976 State Plan provisions contain regulations which revise the prior practice and rule in New York State in such important ways as requiring prior parental consent to evaluations and providing for eventual destruction of certain identifiable data. New Part 200 should accordingly be amended to include and integrate these and the other provisions of the 1976 State Plan.

PART II

Additional Sequential Comments

200.1(f) - Impartial hearing officer - This definitional provision should be amended to require:

(1) the hearing officer may not have been an officer, employee, or agent of the school district or BOCES for two years prior to his appointment, and may not be such an officer, employee or agent for two years following the termination of his position, and (2) the impartial hearing officer may not be an officer, employee or agent of another New York State school district or BOCES.

200.1(q) - Change in program/educational placement - This definition should be amended to specifically include any change which results in a more or less restrictive educational environment for the pupil.

200.2(a)(3) - The definition of severely emotionally handicapped should be amended. The present definition only relates to one type of severe emotional disturbance and fails to include students who may rolate to peers but who are seriously agressive or acting out and require small intensive class placement and supervision.

200.2(d) and (e) - These paragraphs should be amended to elaborate district annual plan requirements to assure compliance with the scope of P.L. 94-142, Sec. 614.

In addition, since the annual application required under that S constitutes in effect the school district's proposed scheme for providing educational services for handicapped children within that law's precepts, there should be an opportunity for public participation in the development of that local plan. We suggest, therefore, that provisions be included requiring adequate public hearings and comment periods for school districts of varying sizes.

200.4(b)(2) - We strenuously object to raising the class size for severely emotionally handicapped children from eight in a class to ten students. We suggest that for children suffering from severe emotional disabilities (which includes autistic and psychotic children) such a class placement would not be considered reasonable and appropriate within the meaning of the New York Education Law. The clause should be amended to the original figure of eight in a class.

We also point out that the regulations do not include a class size maximum for classes for the moderately emotionally handicapped.

200.4(d) - We also object to raising the resource program maximums from a teacher load of 15 to a teacher load of 20. Again, this raises the pupil-teacher ratio to a point which cannot be considered as providing a suitable or adequate special education program, and will foreclose using resource programs for any except minimally handicapped students. The impetus in the State scheme should be toward using these least restrictive alternative programs for pupils who are more seriously handicapped.

It is particularly important that the class size maximums be appropriate since in this period of financial difficulty the school districts will be under intense pressure competing for limited resources and will necessarily raise class sizes to the maximum level.

200.4(b)5; 200.4(e)3(iii) - Variances in class size and home instruction hours - We object to this blanket provision. We know of few, if any, grounds for variances other than to meet the needs of the individual child or for the purpose of allowing for an equivalent alternative special education program. The waivers of class hours, class sizes for the handicapped, and hours of home instruction which have been systematically imposed on New York City school children have grievously undermined the educational services provided those children. A standardless authorization of this character necessarily lends itself to abuse.

200.4(e)(1)(i) & (ii) - Qualifications of teachers providing home instruction. Except in those instances where a child is on home instruction because of temporary physical illness, the teachers should have appropriate special education certification.

200.6(a)(6); 200.8; 200.9 - Due process in relation to suspension from State operated and supported and tuition grant schools - These provisions should be amended to mandate suspension "procedures at least as protective of due process as the provisions of Section 3214 of the Education Law." The current requirement of Sec. 200.6(a)(6) for comparable procedures is too vague, and subject to varying and inconsistent interpretation.

200.8(b)(7) - The requirement that a pupil attending an out of State school report for an evaluation - this should include a requirement that scheduling of the evaluation must be reasonably convenient for the parents and child. Where the district requires the child to go to New York State for the purposes of the evaluation, the district should pay the transportation costs.

200.8(b)(8) and 200.9(g) - Discharge of handicapped child from a tuition grant facility - These paragraphs should be amended respectively to require that "no student" may be discharged until he/she can be placed in a more appropriate program without interruption of the continuity of such pupil's educational program." This amendment would mirror the protection against educational disruption included for State schools under Section 200.6(a)(4).

200.8(b)12 and 200.9(k) - Barring of tuition and maintenance payments by parents to nonpublic schools - We strongly support provisions prohibiting the requirement of payments by or contributions from parents to private schools. We urge that an added provision be included prohibiting the requiring of deposits or prepayments by parents for tuition or maintenance for pupils for which the district has contracted or will be requested to contract. Such prepayments have the effect on the one hand of excluding parents without financial resources, and on the other of placing heavy and unfair financial burdens on parents with limited resources. Both of these effects are violative of the constitutional and statutory rights to a free education at public expense under New York and federal law. If the time limits we have proposed for IEP and due process proceedings are adopted and enforced, this prohibition will not impose undue hardship on schools. As a complement to such provision, reasonable payment schedules for the schools comparable to the State schedule for §4407 should be set forth; otherwise, "cash flow" problems will prevent some schools from continuing in operation. In New York City there have been aggravated delays in payments by the City to contract schools.

200.7 - Surrogate Parents - New Part 200 should be amended to state when parents are "unavailable" for the purpose of appointing a surrogate. To avoid abrogation of the rights of parents, the definition must be narrow. Where parents are temporarily unable to participate directly in the procedures and processes set forth under this Part, they should have the option of authorizing representatives to act in their stead.

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April 22, 1977

Bernice Kipfer
Assistant Commissioner for
Education of Children with
Handicapping Conditions
Office for Education of
Children with Handicapping
Conditions
55 Elk Street
Albany, NY 12234

Dear Dr. Kipfer:

The Public Education Association wishes to comment on the Draft of the Fiscal Year 1978 Annual Program Plan for the Education of Handicapped Children under Title VI-B, Education of the Handicapped Act, as amended by Public Law 94-142.

The F.Y. 1978 State Plan is a disappointing document; in our opinion, it falls so far short of the requisite commitment of expertise, intellectual effort and imagination necessary to realize the innovations and program standards commanded by P.L. 94-142 that it must raise grave doubts about New York's readiness and willingness to meet that challenge.

We recognize that the format of the document may be circumscribed by federal reporting requirements; however, the content of the Plan is, in substantial part, no more than a recitation of various statutory requirements and the repetion of broad policy assertions. What we find noticeably, and regrettably lacking, is an effort to translate those mandates into meaningful action or thoughtful analysis or to highlight where current state law and regulations which are the true indices of New York State policy conflict with or fail to realize those policy assertions and for federal law requirements.

For example, page 22 of the Plan refers to an "impartial hearing officer". P.L. 94-142 gives this hearing officer, whose decision is final subject only to further state and judicial review, an essential role in assuring that procedural safeguards surround this critical decision making process. In stark contrast, current New York State law and Commissioner's regulations make the "impartial hearing officer" a mere recommending agent to a board of education which is free to accept or reject his findings and decisions. The Plan not only fails to reflect this important divergence between federal law mandate and state law reality, but it inaccurately suggests that state law and practice conform rather than conflict with the federal requirement.

Similiarly, the Plan is equally confused and inaccurate in its discussion of the role of the Committees on the Handicapped. The Plan repeatedly suggests that it is the Committee who determines a child's educational placement; however, state law and regulations provide that the Committee make recommendations to the Board of Education which is free to accept or reject its proposals.

In our view, the Plan, in its current form, is so fundamentally indequate in all respects that only a thorough-going reconsideration and re-drafting will suffice.

Our comments, at this time, focus specifically on two critical areas of mandated program development of particular concern to us. Far more analysis and planning than is reflected in the current Plan must proceed in both child identification and personnel development.

The State's plans for "Child Find" or "Child Identification" as reported in this Draft include interagency cooperation, the dissemination of information, the provision of technical assistance and the assumption of a monitoring function by the State Education Department-all sound concepts but all poorly described in broad and vague terms. The Plan fails to either concretely describe planned new activities or to analyze previously initiated pilot efforts; no attempt is made to assess the State's current resources both within and outside the school system and to harness them as a basis for future planning.

The Plan is plainly uninformative about any specifically defined strategies the State has undertaken or intends to undertake to locate currently unserved or underserved children in or out of school or to identify children with special learning needs at the earliest possible stage. For example, the Plan does not indicate what, if any, mechanism the State has or is planning, for early pre-kindergarten screening and identification as well as for on-going continuous screening of school-age children after kindergarten entry. Further, the Plan is silent about the canvassing of target groups of youngsters whose school history and/or current status suggest an unidentified and/or unserved handicapping condition, i.e. suspended children not currently in school, children who are consistently or habitually truant, children who are persistently left-back or are experiencing serious academic difficulty, school age children in hospital or other institutions or who have been referred to the Family Court or other juvenile justice agencies.

Child Identification is not only a prerequisite to compliance with P.L. 94-142 and its mandated services priorities. An effective plan for the earliest possible identification of children with special educational needs is a critical first step for all sound special education programming. As such it deserves more thoughtful, specific and cogent treatment than the Plan currently reflects.

In the equally important area of personnel development, the Plan also fails to pass muster. This seems particularly unfortunate because the Plan itself indicates that the Department already has a track-record in this area and has outlined a number of programs for future implementation. However, the Plan fails to indicate the actual substance of these programs, the degree of outreach, the needs already identified, the effectiveness of existing programs, or the goals and objectives of on-going or newly conceived projects.

Noticeably absent, as well, is an effort to inter-relate and orient personnel development strategies to meeting the federal law's innovative least restrictive environment and individualized education planning requirements.

As you know, the Public Education Association strongly supports these concepts and has urged their forceful implementation. In our opinion, effective personnel development programs are essential if teachers are to assume the responsibilities and meet the challenges of the new law. Beyond the basic need to develop strategies through which to introduce and interpret those innovations to experienced teachers, close attention must be paid to organizing, administering and financing in-service training in light of contractual limitations on the teacher's working schedule and the fiscal constratins on local school districts. Finally, the time frame in which the design and implementation of personnel development programs and the evaluation of these programs are to take place makes little sense. The Plan deadlines needs assessment activity for April 1, 1978; yet program evaluation is by its own terms, deadlined for completion in June 1978, a seemingly impossibly short two months later.

Because the Plan has been presented in "Exposure Draft" form and because it has not yet been widely circulated* or subjected to meaningful public scrutiny, we remain hopeful that a more refined and thoughtful document will be prepared and circulated before any submission is made to Washington.

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*The Plan does not indicate which individuals and organizations received a copy. However, PEA received a copy of the Plan from another public interest advocacy organization aware of our concern with the provision of special education services. The Department did not send a copy to us, or inform us that one had been prepared and was available on request. This, despite the fact that our extensive comments on the Commissioner's regulations submitted on February 1, 1977, made our interest in this issue clear.

Sincerely yours,

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July 8, 1977

Received
Date 7/11/77
Subcommittee on
The Handicapped

Hon. Jennings Randolph
Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

I appreciated and enjoyed the opportunity to appear before the Subcommittee on the Handicapped on June 21, 1977 to testify about the implementation of P.L. 94-142.

I hope the following answers are responsive to the questions you posed about several of the issues contained in my written statement.

Very truly yours,

Jeanne Frankl

Jeanne Frankl
Counsel

RESPONSES OF
THE PUBLIC EDUCATION ASSOCIATION
BY JEANNE FRANKL
JULY 6, 1977

Q. 1. YOU STATED THAT THERE ARE ABOUT 7,500 CHILDREN AWAITING THEIR THREE-YEAR EVALUATION. WHAT ARE PARENTS DOING ABOUT THIS DELAY?

PEA's Testimony before the Senate Subcommittee on the Handicapped on June 21, 1977 indicated that 7,500 New York City children were awaiting mandatory triennial evaluations this year. Subsequent reports from Board of Education professional staff indicate that this figure represents only a portion of the children entitled to this service. Thousands of additional children are estimated to await reevaluation.

Most parents have not formally challenged these delays. This lack of response is not due to any lack of concern with the welfare of their children. When parents have been informed of their rights under P.L. 94-142 and New York State Education Law, through the efforts of advocacy groups and others, they have successfully challenged delays and pressed for more effective service. Unfortunately, only a tiny minority of parents have access to representation by counsel or lay advocates.

Moreover, in contravention of legal requirements, most parents have not had access to the information which they need to press their claims without the benefit of representation. Section 4403(8) of New York State Education Law requires the State Education Department to distribute a handbook for parents of handicapped children describing the financial and educational obligations of the State and local districts and the legal procedures available to enforce those rights. However, the law failed to [illegible] a date for the publication of this handbook. To date, it is not available.

P.L. 94-142 §617(a)(1)(C) provides that the commissioner shall "disseminate and otherwise promote the education of all handicapped children within the states". However, the proposed regulations make only feeble attempts to ensure that this duty is fulfilled. Sections 121.a.265 and 501 require the states to disseminate information relevant to educational "practices" and "activities". There is no detail either as to the character of information to be provided or how those to whom it must be furnished will be selected.

All of this points to the need for action to facilitate increased parental and advocacy group involvement with the rights of handicapped children. In Comments on the Proposed Regulations to P.L. 94-142 submitted by PEA and other advocacy groups on February 28, 1977, the following suggestions were made:

1) Parent advocacy committees should be established in each school district.

2) State Educational Agencies (SEAs) should develop rosters of interested persons and agencies who will receive copies of annual program plans, will be given time to comment on them, and whose comments must be addressed by SEAs.

3) After approval of plans, State Commissioners should advertise the rights and programs contained in them. Parents of every child in state public schools must be informed of their state plan's contents and the rights contained in it within 90 days after approval.

4) SEAs should be able to use portions of their funds for parent training.

PEA believes that detailed, stringent requirements such as the ones we have suggested are critical to ensure that parents across the country do not remain ignorant and helpless while their children are denied required services.

Q. 2. **WHAT WOULD BE YOUR REACTION TO THE RECOMMENDATION THAT THE STATE LEVEL APPEAL FOR DUE PROCESS BE REMOVED?**

The Public Education Association opposes the recommendation that the state level due process appeal be removed.

State review of local school district decisions is consonant with existing New York State Education Law provisions (§§310,311). Local determinations of the child's handicapping condition, selection of an appropriate special education program or service, and the failure to provide such program are specifically made subject to review and modification by the commissioner of education (Education Law §4404-2).

However, existing New York State regulations which place a premium on technical pleading requirements make the exercise of such appeals unduly burdensome to parents. The Public Education Association has accordingly proposed a State law amendment directing the Commissioner to promulgate appeal regulations which would expedite review and facilitate and assure a fair outcome in parent initiated proceedings.

Preservation of a state level administrative review proceeding is essential to enable parents, the vast majority of whom are not represented by counsel, to seek review of local special education determinations. State education officers can be expected to have the expertise which courts may lack to fashion educationally appropriate remedies. The exercise of this review function by state education agencies can also facilitate their monitoring of local educational agency compliance with P.L. 94-142's mainstreaming, full service and individualized education planning requirements.

Q. 3. **HAS PEA PARTICIPATED IN THE DEVELOPMENT OF THE ANNUAL PLAN IN NEW YORK WHICH IS REQUIRED TO BE SUBMITTED UNDER P.L. 94-142?**

On April 22, 1977, the Public Education Association submitted written comments on the Draft of the Fiscal Year 1978 Annual Program Plan which New York State is required to submit under P.L. 94-142. However, as we noted in our Comments, (copies of which were furnished to you at the hearings for information and inclusion in the Record), PEA did not receive a copy of the Plan or an invitation to comment from the State Education Department. This despite the fact that our detailed Comments on the Commissioner's Regulations submitted on February 1, 1977 (also submitted to you) made our interest in 94-142 compliance clear.

The State has been generally delinquent in its solicitation of public comment on the Draft Annual Plan. Dissemination of the document was limited to an unidentified group. The Plan's extensive appendices were not furnished. Too few hearings, on too short notice were held in too brief a period of time.

B. WHAT STEPS HAS NEW YORK TAKEN TO COME INTO COMPLIANCE WITH THE LAW?

New York's actions over the past year raise grave doubts about our State's readiness and willingness to meet the challenge of 94-142 implementation. Our State law regarding the education of handicapped children was passed last summer a full year after 94-142. Yet it is inconsistent with or silent on many fundamental provisions of the federal law including but not limited to the following instances:

1. Specific learning disability is omitted as a recognized handicapping condition.

2. Federally prescribed related services including developmental, corrective and other support services are not included in the State law's definition of special education.

3. New York State law provides for neither the federally mandated individualized education plan nor for education in the least restrictive environment appropriate to the child.

4. Also absent from State law and regulations are provisions for safeguards in evaluation and testing procedures and to assure the confidentiality of records.

5. As I noted in Testimony before the Subcommittee on the Handicapped (June 21, 1977), federal finality requirements are not honored in State law or local practice: hearing officers under New York's scheme merely recommend to boards of education, which are free to accept or reject the findings. This lack of finality fatally undermines the protections created by the impartial hearing officer requirement of P.L. 94-142.

6. Finally, as also detailed in my Testimony, New York City has taken a number of steps which, as a practical matter, may make implementation of 94-142 more burdensome, more expensive and more difficult than need be.

The State Education Department had an opportunity to address some of these omissions in regulations which it promulgated on January 1, 1977. In fact, its regulations not only failed to clarify local obligations for federal law compliance, they specifically contradict some important federal requirements including: (i) the timing of, participants in, and contents of, the individualized education program and program meetings, (ii) the provision for an impartial due process hearing upon parental complaint with respect to any matter relating to the identification, evaluation or educational placement of the child or the provision of a free appropriate public education.

Perhaps most indicative of New York's failure to take steps towards satisfactory compliance is its highly unsatisfactory Annual Plan. The Plan obscures the operation of New York's due process system, incorrectly suggesting that it complies with federal requirements. Claims that the State has undertaken to meet its child find, personnel development and mainstreaming obligations are not substantiated either by thought-out strategies or evidence of realizable commitment to achieve the goals.

TESTIMONY OF DR. LARRY BROWN
EXECUTIVE DIRECTOR, MASSACHUSETTS ADVOCACY CENTER
ON PROPOSED AMENDMENTS TO P.L. 94-142
BEFORE SUBCOMMITTEE ON THE HANDICAPPED

June 21, 1977

Mr. Chairman, Members of the Committee:

My name is Larry Brown. I am Executive Director of the Massachusetts Advocacy Center, a privately-funded statewide organization which holds as one of its major goals the education of handicapped children.

I appreciate your invitation to testify today on Public Law 94-142. This creative law is based substantially on the Massachusetts Special Education Act. I believe the three years of experience we have in providing services similar to those now mandated under P.L. 94-142 will provide insight into the amendments presently before you.

I have reviewed the proposed amendments, and wish to make four points for your consideration:

1. The proposal of these amendments reflects both a lack of experience in special education and fear of the unknown. Neither factor, however, should encourage us to back down on the law before it even begins.

I read with some amusement and deja vu the proposed amendments. Exactly three years ago, the spring before our state special education law was to go into effect, a coalition of school and local officials appealed to the legislature to amend or postpone the law. Starting with the disclaimer, "We agree with the intent of the law, BUT....." these officials claimed the law unworkable, too stringent, too restrictive and too much too fast. They proposed postponement, phasing-in, and widespread waivers.

Fortunately, the legislature - listening to the needs of handicapped children as articulated by their parents and the rights of these children upheld by court after court - declined to roll back the clock. Today, Massachusetts children and even school officials themselves are much better off for that leadership. Our law, despite some predictable problems, is working very well. More than twice as many handicapped children are served today as three years ago. And, most notably, none of the reasons advanced for amending the law before it took effect have arisen.

In short, those who call for amendments, postponement, and waivers speak from too little experience and frequently exhibit too little commitment to the education of children, whose needs have been overlooked for far too long already. I urge you to consider our experience and the parallels here when you evaluate proposals for amendments now.

2. Clear responsibility for insuring implementation of P.L. 94-142 must reside with the state educational agency (SEA) as presently stated in the law.

Proponents of amendment of this provision of the law argue that state-to-state variations dictate that no single, uniform state agency be designated to monitor implementation by local school districts. Rather, they propose that each state decide which agency will monitor the law.

This proposal does not make sense as a matter of logic. National public policy cannot permit each of fifty states to choose totally different type agencies to implement this law, and leave to them the discretion over how this is to be done. Moreover, this amendment makes no sense based on practical experience.

First, P.L. 94-142 funds will flow through the state educational agencies. As a matter of efficiency and administrative control it is imperative that the agency through which the funds flow maintain the regulatory role. Second, each state does have a state educational agency. This uniformity provides the structural mechanism to maintain accountability which would be lacking if different agencies in different states were responsible in different ways. Third, state education agencies are more familiar with educational programs and services than are other state agencies. Maintenance of regulatory responsibility within the SEA in each state will lessen the likelihood that officials in other agencies, who are unfamiliar with educational programs, will overlook or ignore poor services or noncompliance issues.

Finally, the experience from our own state provides ample evidence that the state educational agency is the proper agency to monitor implementation. In three years, our agency has developed a not-before-exercised regulatory role, has assumed responsibility in areas previously parcelled out to other state agencies - and has begun to make it all work.

For all these reasons, P.L. 94-142 should not be amended with respect to the role of the SEA's.

3. Present due process procedures are essential safeguards both for children and school personnel, and must be maintained.

Amendment proponents would abolish administrative appeal procedures presently built into the law, and rely solely on judicial review. This proposal is shortsighted. It would place far too many educational decisions in the courts. Secondly, it would work to provide due process only to those who could afford or locate an attorney. One of the most successful aspects of our law in Massachusetts is the newly-mandated appellate process through the state agency. This administrative appeal procedure has proved to be a startling success, providing a timely and equitable forum for resolution of disputes. And it has greatly limited the number of cases which otherwise might end up in court.

Proponents also would amend the law to permit children to be removed from their usual educational program pending a review or appeal to determine adequacy of the placement. This proposal is without merit. First, the number of disruptive special needs children is very small. In three years on a statewide basis, we have had only three cases where interim placement had to be altered. Second, the proposed amendment ignores parents: it writes them out of the process altogether. This would be educationally unsound since parents usually are the best judges of their children's needs. And it would make a mockery of due process since it would permit one party to take unilateral action pending resolution of differences.

Our experience reveals that greater abuse of children takes place when their parents are excluded from the decision-making process and local officials are granted unbridled discretion. The present law and safeguards built into it ought to be maintained.

One final note before I go to my concluding point. The due process provisions in P.L. 94-142 are already in operation in Massachusetts; in fact, we have more detailed rights and procedures. One of the pleasant surprises of these procedures is how well they got established and how equitably they work. I urge you to look to the experience we have under our belt rather than listen to hypothetical concerns of some who have not benefitted from such experience.

4. The individualized education plan must be a binding document as presently specified in the law.

The proposal is to amend the law to state that the individualized plan to educate each handicapped child is not a binding document, but an "educational planning device." This amendment, if adopted, would make a sham of the entire federal law.

For too long handicapped children have been subjected to the discretion of "educational planning," and other amorphous concepts which have failed to serve them well. We do have the professional expertise to state with clarity what needs each child has, and what services that child must receive in order that those needs be met. It is both illogical and unconscionable, then, to propose that individualized service plans be drawn up, subject to appellate review, and then permit local officials to decide whether that plan will be carried out - whether the services will be provided.

Proponents of the amendment argue that if the plan is considered a contract, teachers will fear legal action. This is ludicrous. It is not borne out by our experience in Massachusetts. It is the school district that is held accountable, not the individual teacher. Moreover, were this accountability deleted, no school district would be required to provide the services which it determined the child needs in the first instance. The entire federal law would be a circular exercise without meaning-- and it is clear which group of children in our nation would continue to suffer.

In conclusion, none of the proposed amendments I have mentioned deserve adoption for the reasons stated. Rather, the proposal of these amendments even before the law goes into effect represents nothing more than the understandable fears of those who have little knowledge of or experience in provision of special education services. I encourage this Subcommittee to recognize this phenomenon, address it, and move without faltering to insure that P.L. 94-142 fully protects and assists those millions of handicapped school children for whom it is intended.

Thank you.

MASSACHUSETTS ADVOCACY CENTER

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July 18, 1977

Senator Jennings Randolph
Chairman Subcommittee on the Handicapped
of the Senate Committee on Human Resources
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph,

I want to thank you for the opportunity to respond to your questions and present the Subcommittee with information supplementing my June 21, 1977 testimony about the Education for All Handicapped Children Act, P.L. 94-142. I do want to reiterate at this time the central theme of that testimony:There is no reason to amend P.L. 94-142 at this time. Our experiences here in Massachusetts indicate that the proposal of amendments by state bureaucrats even before the Act goes into effect, represents nothing more than a reaction to the understandable fears of those who have little knowledge of or experience in the provision of special education services. This happened in Massachusetts in 1974 just prior to the effective date of Chapter 766. The Massachusetts legislature, responding to the needs of handicapped children and to the legal rights upheld in court, declined to postpone implementation or amend the Law's protections. It is my sincere hope that the United States Congress will also hold the line now, reject amendments, and give this critical piece of federal legislation a chance to work. With a strong monitoring and enforcement program by the federal Bureau of Education for the Handicapped, P.L. 94-142 can be swiftly implemented throughout the United States.

With respect to your first question, the Commonwealth of Massachusetts state education agency (SEA)

(Task Force on Children Out of School, Inc.)

did have general supervisory authority before enactment of 766. However, this was shared authority with other state agencies. Chapter 766 withdrew responsibility from those other agencies, and placed it clearly within our SEA. The result has been two-fold:First, for the first time in this state there is real accountability for the quality and availability of special education programs and procedural safeguards. Public officials and private citizens know that the SEA is responsible and that it must respond. Second, overall planning, coordination and regulatory functions by the SEA have improved dramatically. The previous lack of coordination and buck-passing among state agencies has virtually halted. There did exist some predictable problems in the transfer or refinement of authority, but these have not been insurmountable by any means.

With respect to your second question, it will create irreconcilable conflicts of interest for surrogate parents to be employees of the agency whose decision is being challenged. Even if the surrogate were not directly involved in the provision of services to a child, it is inconceivable to me that a teacher or principal in a school district, or a social worker in an institution, would have the freedom to challenge forcefully his own employer's actions. This will be especially true when a program should be challenged as inadequate and a different more expensive program is sought. The children needing surrogates are, by definition, parentless and thus the most vulnerable in a state. Many are in institutions. It is essential that those who act as their representatives be free from even the subtlest of pressures. Surrogate parents must be the most forceful advocates in the state, and therefore, they must not be employees of the agencies they may challenge.

With respect to your final question, on the basis of our experience I can point to several specific things done in Massachusetts to ease implementation problems which should be considered in the implementation of P.L. 94-142. First, and by far most important, is the clear, unequivocal support of political leaders for complete and forceful implementation of the law and the education of all handicapped children. The clear message must be that handicapped children have a right to an education, and that there is no turning back. Any equivocation of any sort precipitates delay and evasion. Second, the federal regulations must place clear responsibility with the SEA to insure the coordination and accountability addressed above in this letter and in my written testimony. Regulations must insure that overall monitoring of implementation by the SEA will be visible and aggressive. This includes: the conduct of regional workshops to explain the law to local officials, the provision of technical assistance in implementing it, and the enforcement and close monitoring of reporting requirements. Finally, the SEA must be required to exercise its responsibility in a firm, fair manner whenever enforcement actions are required to insure implementation. Waivers, delays, and other footdragging precipitates similar practices at the level of the local education agencies.

Please contact me if I can be of further assistance or provide any additional information to the Subcommittee.

Sincerely,

Larry Brown

Larry Brown
Executive Director

CENTER FOR
PRESCHOOL SERVICES

THE FRANKLIN INSTITUTE RESEARCH LABORATORIES
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Congressional Hearing - Washington, D. C. - June 20, 1977
Public Law 94-142 - Education of the Handicapped Act
Statement made by: Louise Sandler, Ph.D.
Principal Scientist; Project Director
Center for Preschool Services
The Franklin Institute Research Labs.

I appreciate this opportunity to present some comments in response to the proposed rules based on the provisions of the Education for All Handicapped Children Act (P. L. 94-142).

As an elementary school teacher for six (6) years and as a developmental psychologist with 14 years of professional activity in the field of clinical services, I am deeply concerned that the proposed regulations will further the application of stored findings in the fields of child mental health research.

I am particularly troubled by what appears to be a disregard of countless numbers of young children who enter the preschool, kindergarten and early primary grades at serious risk for school failure and emotional problems. In their Day Care and Kindergarten classes, such children behave like toddlers in one or more areas of functioning. Their symptoms are manifold. They may appear dull and unconnected with classmates and play activities, or they may be disruptive and defiant. On the phenotypical level, they appear retarded, learning disabled or emotionally disturbed. On standardized tests, they can test within the Superior through Mentally Deficient ranges of intelligence. In their classrooms, teachers describe them as: hyperactive, passive and withdrawn, bizarre, uncommunicative, laughing too much, fearful, exhibitionistic, continuously thumb sucking or masturbating, listless and so on and on. In general, these children do not present with obvious physical handicaps.

These are developmentally disordered young children and they defy description within the proposed classifications of handicaps. There is a vast body of research and clinical experience to support my next statement concerning these children: It is not possible to arrive at a valid diagnosis for the majority

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of such children by means of tests, interviews and medical examinations. The complexities of relationships between environmental conditions and intellectual/emotional development often does not permit diagnosis in the absence of treatment.

As the director of the Center which I developed eight years ago to serve preschool children who are showing early signs of developmental problems, I have fought against the absurd notion that funds for setting up diagnostic/intervention classrooms can only be obtained if a child has been school-tested and classified. Rather than setting up regulations that perpetuate the divisions between special education and basic education, young children require what can be termed "well-baby check-up" classrooms that are designed and staffed to provide extended comprehensive diagnoeitc and remedial services as needed by the children and their families.

Let me present 2 cases which may serve to highlight the dilemma presented by the regulations.

1. A little boy in Kindergarten is disruptive, attacking other children unable to sit still and involve himself in play. He is untestable because he does not attend or adapt to tasks; medical history and current evaluations show no neurologic or sensory handicaps. Is he seriously emotionally handicapped? According to the definition, he might be socially maladjusted and, therefore, not qualified for whatever special educational services might be available. However, if judged seriously emotionally disturbed, I would predict that at least 35% of the preschool and Kindergarten population today would receive similar classifications.

2. Another child age 4 in Day Care setting appears slow. His cognitive skills and speech development are similar to a two-year old. He has a history of lead encephalopathy and suffered extreme neglect in his first year of life. His present foster parents appear supportive and interested in the child. Is he mentally retarded? What is this child's primary diagnosis? If he is judged retarded, I would predict that at least 25% of the children with similar functioning levels and histories would fall into this classification.

In the Center program, the first child required two months within the referral classroom (as part of his day) before a highly experienced staff (trained in early childhood clinical skills) could, with confidence, state that the child's primary problem was a panic reaction to a psychotic grandparent living in his home who was literally tormenting the boy with frightening threats to mutilate him. Only in the every day situation of a diagnostic/intervention classroom in which a team of trained teachers, psychiatrists, psychologists, and social workers work together to unravel a complicated family picture, could this child's behavior be understood and explained. An "incorrigible" little boy did not require any special education setting in the traditional sense. However, the possibility for such work is dependent upon the extent to which educational systems are ready to plan programming with mental health and child welfare systems. Helping this child required a most sophisticated collaborative "link-up" among all agencies bearing responsibility for child and family health.

Our second case of possible mental retardation required five months in the Center diagnostic/intervention classroom, before the evaluation staff could, with certainty, diagnose a child with a severe organic language problem with good learning potential. He was not pathologically retarded. This child had a specific learning disability, but none of the clinical and teaching staff could have known this following initial tests and evaluations. The "well-baby check-up" classrooms permitted extended evaluation therapy. This child began to learn, to show joy and interest in mastery. Fundamental education—the development of a self system—permitted the child to "learn to learn". The regular primary grades can now educate this child with specific help provided to compensate for his communication problems.

I am most pleased to see that the regulations state the concern that each State educational agency insures that children experience the "least restrictive environment" by providing a continuum of alternative placements to meet their needs. But how can a State agency possibly monitor or challenge existing practices? If either of the two children presented were placed in a classroom for emotionally disturbed and in a classroom for mentally retarded, who is to say this placement is not warranted? In all likelihood, the children would certainly fulfill the prophesies.

Further, there is an additional problem with "least restrictive" environments for labeled children. In the regular large classroom the "bad" boy is still not easy to manage and a "mentally retarded" (or euphemistically "slow to learn") child does not experience intensive corrective relationships. With the majority of young, developmentally disordered children, the symptoms are most often a reflection of a complicated combination of underlying factors. However, regular teachers, typically, have little or no training to enable them to handle children's problems and mental health supports are scarce or non-existent, while "Resource Rooms", with their constraints of time and staff expertise, offer limited remedial advantages.

I fully appreciate the "hair raising" and hair splitting" factors that require consideration in the implementation of the Handicapped Children's Act. I believe that the most remarkable advances are being made through the work of the Office of Education; but I believe also that provisions must be made to support basic education in preventing the need for traditional special education, particularly in the age range of three to seven year old children.

For children three to seven years of age the requirement to label before funds can be made available to serve the child leads to inappropriate diagnosis, and thus to inappropriate intervention. For example, an emotional disorder implies that the defect is in the child. With young children who have not yet crystallized their personalities, it is not appropriate to use labeling terms which have in the past been applied to older children and adults because the problem is, in many instances, not in the child but is the child's reaction to stress in his environment. Further, the young child is in a constant state of change. It is not appropriate, therefore, to diagnose problems and affix labels until his/her environment has been changed substantially (as in the diagnositc/therapeutic classroom) and he/she has had no opportunity to respond to it.

The Act (P.L. 94-142) mandates mainstreaming and placing the child in the "least restrictive environment". By placing the young child in a Special Education setting with its required labels and pre-determined remedial treatment, we are not only not mainstreaming, but we are placing the child in a most restrictive situation, whose specific definitions of the child's behavior (*i.e.* for emotional disorder or retardation) and prescribed forms of intervention will quite certainly result in his conforming to those definitions and treatments.

It is possible to permit a child to remain in his/her regular preschool or early childhood classroom and to provide, as a part of his day, a neighborhood diagnostic/intervention classroom that is part of the Basic Education system, where an interdisciplinary team can determine the nature and extent of the child's (and family's) problems. Intervention begins immediately, proceeding simultaneously with diagnosis. The referral classroom provides unparalleled opportunities for both. It also permits the continuing of many children in regular education classes, with the necessary extra services being brought to them (*i.e.* speech therapy or psychotherapy). Such a classroom can also provide unparalleled services for children and their families by drawing upon community Health and Mental Health personnel and financial resources in partnership with the schools in which the children are already enrolled rather than relying solely upon traditional school personnel. I have included a descriptive list of children who require a non-categorical diagnostic/intervention classroom as a guide to those who may be concerned with including this "non-categorical" concept in the Act.

If there is a ceiling on the numbers of children who may be classified as Handicapped, then it is obvious that thousands of young children like those about whom we are concerned will not be (and should not be) judged "Handicapped" in their early years. Paradoxically, without such a label, whether or not it is appropriate, they will not be eligible for funds for early diagnositc and corrective programs for their very real problems. With detection and treatment they will go on to become learning and social failures.

With non-categorical early identification programs, many of these children will be capable of functioning in regular education classes, with the provision of appropriate related services (such as speech or psychotherapy); all will have had the most comprehensive educations possible.

Aid to states should be allocated to support non-categorical diagnostic/intervention classrooms within basic education in order to prevent overlooking and mislabeling of thousands of young children who have the right to receive the best of what is known in the art of early detection and intervention.

Those responsible for the regulations to implement the Act (P.L. 94-142) must recognize that incentive grants to encourage programming cannot be the sole province of Special Education. To make it so would preclude the ability of Basic Education to meet its obligations to thousands of young developmentally disordered children who populate regular classrooms throughout the country.

In order to approach a clear understanding of the "types" of young children (3 - 7 years) who require a non-categorical diagnostic/psychoeducational classroom (or Day Care setting), I am submitting the following criteria for selections of children. It is not in the best interests of the child to confine ourselves to diagnostic classifications because these proposed classrooms should be the locus for prophylactic, hopefully early preventive intervention. This means that a child is referred before crystalized failure and emotional disorder.

CRITERIA FOR REFERRAL OF CHILDREN

I. General Behavior Characteristics:

1. The child appears physically neglected (*e.g.* seems hungry, unwashed, unclean clothes); The child appears abused either mentally or physically (*e.g.* irregular attendance—unexplained; bruises on body—unexplained).
2. The child who demands his own way in most situations. Cannot tolerate limits or prohibitions.
3. The child cannot defend himself in most situations; Is very passive allowing others to do as they wish: Cannot stand up for own rights.
4. The child has absence of contact with either peers or adults, and in addition, seems to avoid such contacts (or withdraws from them).
5. The child is overly friendly and dependent with adults; Appears to be ready to walk away with a stranger; Clinging type of child.
6. The child acts like a grown-up and will not accept the help or guidance of an adult (nonrealistic indenpendence).
7. The child cannot accept any delay of gratification of needs; Will "act out" feelings regardless of adults attempt to control.
8. The child is listless, lack energy and appears to enjoy little or nothing, looking like nothing is needed and feeling nothing.
9. The child responds to any stress with temper tantrums.
10. The child responds to any stress by withdrawing (*e.g.* excessive thumbsucking, rocks, bites nails, masturbates, pulls own hair out).

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CRITERIA FOR REFERRAL OF CHILDREN - 2

II. Cognitive and Skill Characteristics:

1. Child is awkward or clumsy in comparison to children of similar age.
2. Speech for communication is not developed in line with expectancies for age.
3. Understanding of ideas or instructions is not developed in line with expectancies for age.
4. Poor development of initiative curiosity, interest and motivation for exploring and mastering new experiences.

When a teacher, counselor or social worker perceives a child showing one or a combination of characteristics as described above, referral for evaluation and appropriate psychoeducational intervention is required as described in the Center model.

Equally crucial is the early intervention for children who may appear to be functioning well but are known to come from families who are presently dysfunctioning. Such families include the following situations and/or characteristics.

1. One or both parents with serious physical or mental disabilities.
2. Death of a parent without adequate parent substitutes.
3. Recurrent involvement with law agencies, truancy, alcoholism, drug addiction.
4. Parents who exhibit markedly over protective, over-demanding, over perfectionistic, overpermissive, seductive, neglectful or rejecting attitudes.
5. Severe neglect of children by families.

11/76 Louise Sandler, Ph.D.
Principal Scientist; Project Director
The Franklin Institute Research Labs.
CENTER FOR PRESCHOOL SERVICES

PL 94-142 and Deaf Children

Public Law 94-142

November 29, 1975

An Act

To amend the Education of the Handicapped Act to provide educational assistance to all handicapped children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education for All Handicapped Children Act of 1975".

**Education for All Handicapped Children Act of 1975.
20 USC 1401 note.**

EXTENSION OF EXISTING LAW

SEC. 2. (a)(1)(A) Section 611(b)(2) of the Education of the Handicapped Act (20 U.S.C. 1411(b)(2)) (hereinafter in this Act referred to as the "Act"), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(B) Section 611(c)(1) of the Act (20 U.S.C. 1411(c)(1)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(2) Section 611(c)(2) of the Act (20 U.S.C. 1411(c)(2)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977", and by striking out "[illegible] per centum" each place it appears therein and inserting in lieu thereof "1 per centum".

(3) Section 611(d) of the Act (20 U.S.C. 1411(d [illegible] in effect dur-ing the fiscal years 1976 and 1977, is amended by [illegible] g out [illegible] ending June 30, 1975" and inserting in lieu the[illegible] fol[illegible] "years ending June 30, 1975, and 1976, and for th[illegible] year [illegible] September 30, 1977".

(4) Section 612(a) of the Act (20 U.S.C. 141[illegible](a)), as in effect during the fiscal years 1976 and 1977, is amended—

(A) by striking out "year ending June 30, 1975" and inserting in lieu thereof "years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977"; and

(B) by striking out "fiscal year 1974" and inserting in lieu thereof "preceding fiscal year".

(b)(1) Section 614(a) of the Educ[illegible] Amendm[illegible]ts of [illegible] lic Law 93-380; 88 Stat. 580) is ame[illegible] out "[illegible] 1975" and inserting in lieu thereof [illegible] "the [illegible] ending June 30, 1975, and 1976, for th[illegible] ng J[illegible] and ending September 30, 1976, and f[illegible] endin[illegible] ber 30, 1977,".

(2) Section 614(b) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

20 USC 1411 note.

A SPECIAL ISSUE OF THE GALLAUDET ALUMNI NEWSLETTER

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Introduction

by Ramon Rodriguez, Edmund Skinski and Ray Trybus

☐ The passage of the "Education for All Handicapped Children Act of 1975" (otherwise known as Public Law 94-142, an act to amend Part B of the Elementary and Secondary Education Act) represents a landmark in the recognition of a federal responsibility to provide funding for the costs of special education services and to insure a basic minimum level of program quality along with due process safeguards for handicapped children and their parents. Gallaudet College supports and applauds this Act, and will assist in its implementation with information, resources, and consultation.

Gallaudet College is a national, multi-purpose program serving hearing impaired persons of all ages and providing resource services for people involved with the deaf. The College is also responsible for the Kendall Demonstration Elementary School (PL 91-587) and the Model Secondary School for the Deaf (PL 89-694). A wide cascade of programs exist at Gallaudet; however, the services and resources of the Gallaudet complex are not confined to its 93-acre campus. Leadership capacity and expectations for Gallaudet are embodied in its mission statements and in the directive set by Congress. "Gallaudet must continue to be a national and even an international resource for leadership in education for the deaf." (House Report 1669 on PL 514—90th Congress, 1968.)

The basic purposes of the law are to insure that every handicapped child in the country will be able to receive a free, appropriate, public education. The key words are *free* (no charge to the child or parents), *appropriate* (education programs are to be designed to fit the child), and *public* (the state education department has the legal responsibility to provide appropriate educational services under public auspices and at public expense). The first priority under these amendments is to locate and provide educational services to those handicapped children who are not presently receiving any education—children kept at home or in purely custodial institutions or in other situations in which they are not receiving any education. The second priority is to upgrade the quality and appropriateness of the educational services to those handicapped children who are receiving some special educational services, but services which are incomplete or inadequate to meet all the educational needs of the child. Because the law emphasizes building educational programs to fit the child, rather than simply fitting children into a small number of existing programs, states are mandated to provide a wide range of alternative educational placements, from residential and other special schools, to full time classes in local schools, to integrated ("mainstream") classes with support services, so that the varying needs of individual children can be adequately met somewhere within this variety of alternative placements.

UTION
DEAF
CHILD

This landmark piece of federal funding legislation can enlarge and improve the educational opportunities available to hearing impaired children and their parents. The intent of the law is clearly to *expand, improve*, and *diversify* special educational opportunities for handicapped children. Some groups and school districts are trying to interpret the law to mean that all handicapped children must be in one kind of school program (such as a class in the local school integrated with non-handicapped children) in one location (such as the local school district). *This is not true.* Others are trying to interpret the law to mean that all special schools are to be closed—or at the very least, severely cut-back. *This is not true.* The intent of the law is to *expand, improve, diversify*, so that the special needs of the individual child can be met on an individually determined basis. Some people cite a provision of the law that a child "shall, to the maximum extent appropriate, be educated with children who are not handicapped," to mean that only "mainstream" or "integrated" placements are allowable. *This is not true.* The law says, "appropriate": *if it is appropriate for this specific child* to be in an integrated class, then the child should be there. If it is *not* appropriate for this specific child, then the child is *not* to be placed there. The whole point is that the educational program is to be designed on the basis of the specific child's needs. Children are *not* to be placed in programs purely on the basis of administrative conveniences or because no alternative is available. The program must fit the child; the child is not to be made to fit into a program.

With the implementation of the regulations for PL 94-142 to begin this fall, professional personnel are in the unique position of needing to review and improve services to their constituents under this legislation. No doubt this will demand considerable introspection regarding their present roles, by teachers, administrators, parents, and professionals serving the hearing impaired, but a positive change in role perception and role responsibilities can, we are certain, enhance the probability of increased success for the population they serve. From our vantage point, there exists no more critical issue than the positive involvement of qualified people working with and on behalf of hearing impaired individuals in meeting and implementing the mandates of PL 94-142.

Our charge is especially directed to you professionals, consumers, and parents working with the hearing impaired, because we believe that you possess the understanding and technical skills for assisting the hearing impaired in achieving their full rights guaranteed by the law. No doubt you will need to up-date your knowledge about this new legislation and its ramifications in your state. It is our hope that we can assist you through publications and workshops. Let us reiterate that without your active participation, leadership, and advocacy hearing impaired students will not be served.

In this newsletter we will attempt to highlight those areas requiring your dynamic involvement. These include a firm understanding of the intent of the law, the individual education program, provision for expanded and innovative educational services, and due process.

Gallaudet College, through its faculty and staff, in its own programs on campus and in outreach activities, is trying to join forces with deaf people, with the parents of deaf children, with interested groups and organizations, to present a united front of concerned citizens who will see to it that this new legislation, with its new source of funds and new guarantees of educational quality and parental involvement, will in fact serve its intended purpose: to expand, improve, and diversify special educational services for hearing impaired children. This requires information, training, public awareness, public service, research, advocacy, and human concern. Gallaudet College is ready; if you are, turn the pages and find your place in this new challenge.

PL 94—142: An Analysis of Its Evolution, Features, and Implications

by Roslyn Rosen, Edmund Skinski, and Al Pimentel

☐Free public education is as American as apple pie and motherhood, or hot dogs and baseball. Among the most important rights of our American heritage are the free public education and compulsory education laws which provide opportunities for every child to learn and develop academically, socially, and emotionally into a self-supporting and self-determining citizen of our society.

Education of handicapped children, albeit part of that ingrained heritage, is just now beginning to emerge, beneath a "quiet" revolution, as the handicapped child's needs and right for an appropriate and quality education gains wide public and legislative recognition.

It is only within the last decade that new federal and state legislation, as well as court decisions, related to education of exceptional children have increased by leaps and bounds.

Historical Review of Special Education

Legislation—The beginning of special education legislation can be traced to the development of state schools and institutions for the handicapped. Land grants were authorized for schools for the deaf in Kentucky and Florida in 1827. St. Elizabeths in 1855, Gallaudet College in 1857, and Education of the Blind, through the American Printing House of the Blind, in 1879 were among the first and few legislative enactments for the handicapped. In terms of direct educational assistance, the federal statute can be described as "lukewarm." The government's involvement in general education did not begin until the 1950's, with educational legislation for the handicapped not emerging until the 1960's. The Elementary and Secondary Education Act (ESEA) of 1965 (PL 89-10) established federal commitment to develop and improve local educational programs for educationally deprived children. Title I of ESEA was amended in 1966 (PL 89-313) to provide financial assistance to state programs or schools for the handicapped. Thereafter, attention to the handicapped by the Congress began to escalate dramatically. A history of educational legislation can be found in *Public Policy and the Education of Exceptional Children*, which may be purchased from the Council for Exceptional Children.

Litigation—The dynamic increase in Congressional attention to and support of education of the handicapped may be attributed to a number of factors, but it is without doubt that one outstanding factor was the right-to-education lawsuits and court decisions. Results of such litigation provided the earthshaking catalytic action that would eventually awaken sleeping giants.

The 14th Amendment to the U.S. Constitution guarantees to all people the equal protection of the law. This means it is unlawful to discriminate against a class of persons, for example, with separate systems and procedures for sub-groups, without justification. This reinforces the right of exceptional children to equal education opportunities. In Brown v. Board of Education (1954), the famous desegregation case, it was stated that:

> "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made to all on equal terms."

The logic explicit in the above quotation is that education is the key to success; if this is true for the "normal" child, it is also true for the handicapped child who requires a formal, structured program of education appropriate for his or her handicaps. Yet, of the eight million handicapped children in the U.S., four million were found to be receiving an inappropriate education, and one million were found to be completely excluded from any educational or treatment programs.

The Pennsylvania Association for Retarded Children (PARC) v. the Commonwealth of Pennsylvania (1972) was a lawsuit against the state by 13 mentally retarded children over the failure of the state to provide access to a free public education for all its mentally retarded children. Witnesses testified that there was no such thing as an uneducable and untrainable child, that every retarded child was capable of benefiting from an education. The results of this lawsuit included the following salient mandates to the state: re-evaluation and program placement of plaintiff children, provision of publically supported education to every retarded child in the least restrictive environment, due process hearing, equal accessibility to preschool education, and monitoring of compliance/implementation plans.

The PARC case was a benchmark but elsewhere it merely raised a few eyebrows and invoked a "wait and see what happens" attitude; but the features within the PARC case resurfaced, were expanded to include all handicapped children, and became strengthened by court rulings in the Mills case.

The Mills v. Board of Education (1972) was a class action suit by parents and guardians of seven handicapped children against the DC Board of Education, Department of Human Relations, and mayor for failure to provide all handicapped children with a publically supported education. This litigation established the right of all handicapped children to a free and appropriate education, and the right of parents and children to be informed, to be heard, and to appeal, via due process. The court, moreover, declared that the burden of insufficient funding or ineffective administration cannot be laid more heavily on the shoulders of handicapped children than on those of their "normal" counterparts.

Inappropriate testing and consequent labeling and special education placement have also been grounds for court cases. Diana v. State Board of Education, (1970, 1973), was a suit filed on behalf of nine Mexican-American children in California. These Spanish-speaking children were placed in classes for the mentally retarded on the basis of IQ tests. When they were retested in Spanish, the majority scored above the cut off score for mental retardation. The plaintiffs sued on behalf of all Mexican-American children in classes for the educable mentally retarded and all children in danger of inappropriate placement due to discriminatory testing.

Another case, Larry P. v. Riles (1972) protested the placement of six black children in mentally retarded classes in California based on tests failing to recognize their unfamiliarity with white middle class culture.

These cases resulted in provisions for non-discriminatory testing (based on language or culture), testing in native language or with the assistance of an interpreter, and appropriate, standardized assessment tools.

Reexamination of the Equal Educational Opportunity Concept

The concept of equal educational opportunity has evolved from a free-for-all challenge as implied in the Brown case to the individualized educational rights embodied in PL 94-142. Weintraub and Abeson (1976) explain the changing concept thus by:

> In the 1950's and early 1960's, equal education opportunity was equated to a contest. "The field is clear, the contest fair; come and win if you can!" Everyone had equal access to education if they qualified, and equal opportunity to meet or fail its objectives.
>
> In the 1960's, American education moved into the compensatory period. It was said to those in the contest, "We'll give you crutches, we'll give you remedial reading, we'll help you run the race." The concept was now equal access to differing resources for equal objectives, with the same finish line expectation.
>
> Today the meaning of equal education opportunity, because of litigation and federal court activities, is interpreted to mean "equal access to differing resources for differing objectives."

Whereas formerly the child had to fit the program or be told to go away, today it is recognized that the program must fit the child. The Individualized Education Program (IEP) in PL 94-142, as will be clarified later in this report, is considered an accountability model for assuring that the child receives the free and appropriate education as individualized for him in his IEP blueprint.

Introduction to PL 94-142

The Education for All Handicapped Children Act became law when President Ford signed it on November 29, 1975. This legislation amends and expands on Part B of PL 93-380 which provides assistance to the states in the initiation, expansion, and improvement of programs for the education of the handicapped. As of this date, the last draft of the regulations governing PL 94-142 is being refined and finalized.

PL 94-142 becomes fully effective October 1, 1977, with a staggered timetable for full compliance. The immediate target population are handicapped children, ages 3 to 18, effective now, and children ages 3-21, effective in 1980. Programs for children ages 3-5 and 18-21 are not mandatory if such would be inconsistent with existing state law or practice, or court orders. Preschool incentive entitlements of $300 per preschool handicapped child are given to states providing special education and related services to its handicapped preschool population, ages 3-5.

Authorized (but not yet appropriated) federal support in terms of funding begins with 387 million dollars in 1978 and is increased substantially each year until 1982 where it will hover around 3.16 billion dollars. State educational agencies (SEA's) and local educational agencies (LEA's) receive money based on a count of handicapped children served in their area. Priorities for spending money are given first to children who are not served, and second to children who are inadequately served, meaning that they receive some but not all the special education and related services that they need.

Today, programs for handicapped children must be appropriate for each child.

Civil Rights Guaranteed by PL 94-142

Public Law 94-142 is a legislative landmark that has also been labeled a "Civil Rights Act for the Handicapped" in that it provides basically seven civil right guarantees to all handicapped children and their parents. These are delineated and clarified as follow:

1. Right to an Education

In the past, because of 1) lack of educational support, in terms of programs and personnel, tailored to meet the child's specific learning needs and problems, or 2) the belief that some children were either uneducable or more trouble than they were worth, some children were denied educational opportunities. An additional problem was the lack of a systematic child-find program whereby children in need of such services could be identified and placed. The PL 94-142 right to education guarantee is based upon the premise that any child is capable of benefitting from an education; consequently there is no reason to exclude any child from educational opportunities.

2. Right to a Free Education

Some families have had to bear the burden of financing the costs of the special services or programs needed for their children in private or special schools if the public schools turned them away.

Costs covered, for example, special tutoring or therapy, transportation, tuition, board and room in private settings, and so on.

PL 94-142 recognizes the obligation of the state to pick up the tab for education for all its children, whether normal or handicapped, so that there would be no financial barriers to educational opportunities.

3. Right to an Appropriate Education

Of the seven million handicapped children, four million were reported to be inadequately or inappropriately served. This means that they were either not getting all the special support services needed or not receiving the right kind of services or programs. Those were the children in the proverbial closets of classrooms or in the dumping grounds of tracked training programs and custodial warehouses.

Because of the aforementioned premise of the educatability of all children, given an appropriate program, PL 94-142 mandates that an individualized educational program (IEP) be developed for and provided to each and every handicapped child at no cost to the parents. This is the heart of the law.

The IEP serves two basic purposes. First, it is the blueprint for the child's educational program, with all the special services needed. Second, it helps to determine the proper educational placement for the child that will be most conducive to the accomplishment of that child's educational goals as stated in the IEP.

4. Right to Least Restrictive Environment (LRE)

Probably as a result of the Brown case, the doctrine "seperate but equal" was not good enough anymore. The logic explicit in the least restrictive environment, as surfaced by the PARC case, is that education with non-handicapped children, in a neighborhood school, and life with the family, is the most normal environment. It is perceived by some professionals that institutionalization sets children apart from homes, communities, and the mainstream of life, causing adjustment problems upon "graduation."

The right to least restrictive environment in PL 94-142 affords the handicapped child equal accessibility opportunity to the environment that would be most appropriate and most conducive to his academic, social, and emotional maturity.

5. The Right to Due Process

The school house door has often symbolized an overwhelming barrier for parents. Assertive parents are regarded as squeaky wheels that must be either temporarily oiled or "replaced" by either avoidance or stalling techniques or with putdowns. Additionally, changes in the placement of children, expulsion or discharge from school, tests, and confidentiality breaches are made without the knowledge and participation of parents. Parents may yell but there is no assurance that anybody would listen, short of the courtroom judge.

PL 94-142 says to parents, "You have the right to be heard, to be informed, and to be involved. You have the right to do so in your native tongue or with the assistance of an interpreter. You have the right to question and challenge decisions. You have the right to be informed in writing in detail of the proposed action and the reasons for it. You have the right to examine records and evaluation results, and to have them explained to you. You have the right to agree or to disagree. You have the right to a hearing conducted by an impartial hearing officer. You have the right to use your own witnesses, experts, evaluators. You have the right to go to court anytime."

6. The Right to Confidentiality

This is based partly on the Buckley Amendment, which assures that confidential or identifiable data will not be shared inappropriately or without the written consent of parents or guardians. This safeguard is extended to all information in files, evaluation results, due process outcomes, LEA reports, and state reports.

7. The Right to Non-Discriminatory Testing

Little recognition has been given to the impact of "minority" cultures or languages on the test performance of exceptional children. Erroneous placements into special classes and inappropriate classes, and consequently, lowered expectations for these children, have been the results of tests that discriminate against children who have not assimilated white middle-class values or who do not have a working command of English.

PL 94-142 mandates that tests cannot discriminate on the basis of race, culture, language, or communication method. The implications are that tests must be appropriate and validated for the target population in question, that the evaluator must either be articulate in the child's native language, or use an interpreter, and that the evaluator must be certified and qualified to do the job.

Features of PL 94-142 Fiscal Allocations: The law establishes a formula in which the federal government makes a commitment to pay a gradually escalating percentage of the national average expenditure per public school child times the number of handicapped children being served in the school districts of each state. The percentage will escalate on a yearly basis until 1982 when it will become a permanent 40% for that year and subsequent years. Starting in fiscal 1978 5%, FY-79 10%, FY-80 20%, FY-81 30%, FY-82 40%.

Role of the LEA: The LEA has the authority to identify all handicapped children in its geographical jurisdiction, to evaluate each child, to develop an IEP for the child, to recommend appropriate educational placement, to conduct the educational programs for those children placed within its educational programs, to monitor and re-evaluate, at least annually, those handicapped children that have been placed in special public or private facilities regardless of geographical location. The law specifies in detail who shall be involved in assisting the LEA in carrying out its authority, assigning responsibilities to the parents in participation in evaluations, and in developing of the IEP including detailed procedures for resolving differences when they occur.

State Advisory Panel: Each state shall have an advisory panel composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, state and local education officials, and administrators of programs for handicapped children.

The panel shall have the following duties:

- advise the State education agency on unmet needs relative to the education of all handicapped children within the state,
- comment publicly on rules and regulations issued by the State and procedures proposed by the State for distribution of funds,
- assist the State in developing and reporting such data and evaluations as may assist the U.S. Commissioner.

State Plans: State plans must be submitted by the State Education Agency and be approved by the Federal Commissioner of Education annually.

Plans' content, in part, include provisions for:

1. Public Participation;
2. Right to a free appropriate public education;
3. Timelines and ages for free appropriate public education;
4. Full educational opportunity goal, including timetable, facilities, personnel and services;
5. Priorities;
6. Identification, location and evaluation of handicapped children;
7. Confidentiality of personally identifiable information;
8. Individual education programs;
9. Procedural safeguards;
10. Least Restrictive Environment;
11. Protection in evaluation procedures;
12. Responsibility of State educational agency for all educational programs;
13. Monitoring procedures;
14. Implementation procedures;
15. Procedures for consultation;
16. Compliance with law on fund usage;
17. Other federal programs for handicapped;
18. Comprehensive system of personnel development;
19. Private schools;
20. Annual evaluation;
21. State Advisory Panel.

Relationship to PL 89-313: Some relationship to other legislation for the handicapped can be identified. With respect to PL 89-313, which focuses on handicapped students attending special state schools, no direct relationship exists in the law. However, there may be some effect from PL 94-142 on PL 89-313. Since handicapped children attending special state schools will also be included in PL 94-142 accounting and programming, including the Individual Education Plans, one question that could be posed would be on the justification for supplemental (313) funds since the IEP is theoretically supposed to provide completely for the educational and related service needs of each handicapped child. In addition, PL 91-380, especially Title III, provides, through a 15% earmarked provision in the law, for supplementary and innovative projects for handicapped children in the public schools.

In-service training: PL 94-142 will require highly specialized knowledge and skills on the part of many regular public school personnel in order to identify, evaluate, develop IEP's, and teach handicapped children. Personnel and special schools with highly specialized training should be developing means of interfacing with the public schools to pool knowledge and provide needed training.

Employment of the Handicapped: PL 94-142 provides that wherever possible, LEA's and SEA's will make a positive effort to hire and to advance in employment handicapped persons. However, this particular provision is to be monitored by the Office of Civil Rights in HEW rather than the Office of Education.

Architectural Barriers: PL 94-142 specifically includes barrier removal and physical modification of educational facilities as needed to make schools accessible to handicapped children. Communication and visual barriers are included in this concept by specific mention of use of interpreters for deaf persons and readers for blind persons.

Native Language: The law specifies that foreign language interpreters and interpreters for the deaf shall be provided for parents and for children in annual evaluations, parent conferences to review IEPs, and due process proceedings.

This new legislation can provide the qualitative/quantitative services so often sought by parents, advocates, and professionals serving the handicapped. Articulation of the above requires careful and succinct interpretation regarding the intent of this legislation. It behooves all concerned parties to prepare themselves for these newly developed roles.

Non Compliance: If a state substantially fails to comply with some of the mandates of PL 94-142, or chooses to disregard the procedural requirements and paperwork, the Commissioner of Education in the Office of Education may withhold PL 94-142 assistance funds to the state. Additional cuts may also be made in governmental funding, as follow: Part A of Title I of the ESEA; Title III of the ESEA and Part C, Section 431 of PL 93-380; Vocational Education Act. SEA's may also withhold funds from non-complying LEA's. In all such pending actions, due process rights are first given to the LEA or SEA in question.

Implications

Mere recognition and understanding of PL 94-142 can be likened to seeing the tip of an iceberg. An enormous amount of work will be required in order to translate the mandates from paper into action.

A few of the needs include:

1. Parent awareness and education programs that inform them of their rights and obligations under the law as well as enhance their understanding of their child's handicap and special needs.
2. Extensive pre-service and inservice training of professionals covering both the processes required under PL 94-142 and special needs of handicapped children in mainstreamed (integrated) programs.
3. Development and upgrading of special services and support personnel in mainstreamed programs to enable environments that will facilitate the handicapped child's educational, social and emotional growth.
4. Development and improvement of relationships between special schools and public schools that will facilitate information and resource sharing.
5. Improved assessment tools and qualified evaluators who will provide accurate data upon which IEP's must subsequently be based.
6. Guidelines for IEP development delineating the needs and special services for different handicapping factors that will assure the development of an appropriate IEP.
7. Ways and means for monitoring and evaluating IEPs and programs.
8. Wider public awareness of the various handicaps and acceptance of the abilities of the disabled person.
9. Increased employment of handicapped people in schools and various jobs so that they may serve as models for identification and inspiration for handicapped children.
10. Removal of architectural barriers and communication barriers that minimize accessibility for handicapped individuals.

Conclusion

The Government Accounting Office, in its report entitled "Training Educators for the Handicapped: A Need to Redirect Federal Programs" (1976) stated that budget constraints and lack of prepared personnel are among the major factors contributing towards inadequate satisfaction of the needs of a handicapped child in public schools. "Without question, most of the children in unserved or underserved school systems still remain in the mainstream, but do so most inappropriately and at a great deal of cost to both them and society."

The ground work for the implementation of the far-reaching new federal legislation which guarantees all handicapped children the right to a free, appropriate, and quality public education is now well under way. Despite a few thorns, this can be an exciting and challenging rose garden.

References

Comptroller General of the United States. "Training Educators for the Handicapped: A Need to Redirect Federal Programs." Report HRD 76-77. Washington, D.C.: U.S. General Accounting Office, September, 1976.

Federal Assistance for Programs Serving the Handicapped. Washington, D.C.: Office of Handicapped Individuals, DHEW Pub. No. (OHD) 76-22001, 1976.

Weintraub, F., & Abeson, A., Ballard, J., & LaVor, M. *Public Policy and the Education of Exceptional Children.* Virginia: Council for Exceptional Children, 1976.

Issues in Assessment of Hearing Impaired Children

by Judy LeNard and Ray Trybus

With an emphasis on the development of individualized educational plans for each handicapped child, the need for individual assessment of the child assumes major importance. An educational program cannot be designed for an individual child unless and until that child's current status and learning styles are known in some detail. The function of assessment is to "map out" the child's present status and probable response to various alternative educational plans, so that the individual program (IEP) can then specify the broad areas of learning, and the scope of teaching/learning methods and approaches which will constitute the educational plan for the specific child for the coming year.

While this sequence may be conceptually quite simple, the practice is another issue altogether. The direction in which the law points with respect to individual assessment is positive and desirable. For example, the law emphasizes that persons conducting educational assessments must be appropriately trained, certified, and knowledgeable about the child and the correct interpretation of the assessment results. This is obviously a desirable ideal. It is equally obvious that there simply are not enough persons in the United States who are appropriately trained, certified, and knowledgeable about deafness and able to assess the educational needs of deaf children to provide this ideal at present. The need for training such evaluators, and for creating funded positions for such persons at state and local levels is enormous. Given the exasperating fiscal constraints of state and local education agencies, the needed training and position funding are unlikely to be forthcoming unless federal money is provided for these purposes. Positions may be funded through the federal per capita payment under 94-142, but funding of training is quite an open question.

Similarly, the law specifies that appropriately designed and validated, non-discriminatory tests and evaluation procedures are to be used. Again, the reality is far from the ideal. There are no more than a handful of appropriate, validated, and non-discriminatory tests for deaf children; the law's mandate cannot change that reality. The apparent solution will depend on federal support for the development and validation of such appropriate instruments—a process which will occupy many years, if it occurs at all. The commercial test producers have shown for years by their behavior that they consider it financially unprofitable to produce such instruments.

Assessment is a crucial issue because it yields data upon which the IEP and placement will be based. Discriminatory or inappropriate assessment will result in an inappropriate IEP, but that IEP will theoretically be judged "appropriate" if developed and implemented according to the law, notwithstanding the "real" needs of the child.

Section 612(5)(C) of PL 94-142 deals with testing and evaluation:

> procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child."

The statutory language boils down to basically three elements related to testing:

1. Tests and materials cannot be racially or culturally discriminatory.
2. Test administration must be in child's native language or mode of communication.

3. No single procedure shall be the sole criterion for determining an appropriate program.

The proposed regulations (*Federal Register*, December 30, 1976) add considerable detail to the statutory language and are useful in clarifying the intent of the law with regard to evaluation. Evaluation procedures are contained in Section 121a.432.

Procedural safeguards—The proposed regulations require notification to parents (121a.404), in the native language or communication mode of parents, whenever the SEA or LEA proposes to initiate or change the identification, evaluation, or educational placement of the child, or refuses to initiate or change these. Written parental consent must be obtained before an evaluation is conducted. Independent educational evaluation may be requested by parents and conducted at public expense, subject to Section 121a.403.

In 121a.400, evaluation is defined to mean procedures used selectively with an individual child, and does *not* include basic tests administered to or procedures used with *all* children in a school, grade, or class.

Areas to be tested—The regulations (121a.432 (b) and (c)) define the areas to be tested:

> "Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
>
> "Information from sources than ability or achievement tests, including information concerning physical condition, sociocultural background, and adaptive behavior in home and school, is gathered and considered and the weight given to each of these sources is documented."

Additionally, 121a.225 states that the IEP must include a statement of the child's present level of educational performance, including academic achievement, social adaption, prevocational and vocational skills, psychomotor skills, and self-help skills.

The issue here is that although a wide range of data is called for, some areas very important to adequate assessment of hearing impaired children are not spelled out in the law.

In the section on definitions, related services such as audiology and speech pathology are clearly defined (*Federal Register*, page 56978). Viewed as a whole, the law and the regulations clearly intend for all areas to be tested that would prove significant in making a valid and complete evaluation leading to appropriate placement. An area of concern to persons working with hearing impaired children would be to make known to the people responsible for testing which areas of testing are essential to adequate evaluation.

Appropriateness of tests and materials—The law mandates that tests be nondiscriminatory racially or culturally. The regulations specify that tests be validated for the specific purpose for which they are used; be used for the specific purpose recognized by the producer; and be provided in the child's native language or mode of communication unless clearly not feasible to do so. No one test or type of test or other means of evaluation can be used as the sole criterion for placement.

Regulations and statutory language are very clear. Of particular interest is the test validity statement. Knowing how few standardized tests are valid for hearing impaired children raises some interesting questions and focuses the field on a problem that has long existed. Perhaps this legislation will be the catalyst for some activity in the area of testing for the hearing impaired.

The issues in this subtopic are the dangers of tests and procedures that discriminate against the hearing impaired child because of language. All persons familiar with education of the hearing impaired child are aware of this pervasive problem but persons outside the field are not usually sensitive to it.

Another issue with regard to appropriate testing and materials is the age factor. Obviously, no one battery of tests will suffice to cover the evaluation needs of the total age range covered by the law. It is questionable that the same range data are even appropriate at all ages. Age difference and its impact on test appropriateness is not spelled out in the law or regulations, but it is the kind of significant factor that will create the need for not one battery of tests but several and lots of flexibility within each.

Tester skill and administration—The law and regulations require that test materials or procedures be administered in the child's native language or mode of communication unless it is clearly feasible not to do so. The regulations require that testers meet applicable certification or licensure requirements under state law.

Persons working with hearing impaired children welcome the statutory requirement of using the child's mode of communication in testing. Several issues do arise with regard to this. First the phrase "unless it is clearly not feasible to do so" brings up the question of how and who determines when "it is clearly not feasible." Some thought needs to be given as to how the determination of the appropriate mode of communication is made. Do we take the parents' word on how the child communicates? Do we do some pre-testing or observation and make a judgment on that basis? What other options exist?

Although the intent of the law seems very clear on the administration of mode of communication and native language—it says nothing about the level of skill required for the tester. Will "pidgin" Spanish or sign language be acceptable, or on the other extreme, is certification or proof of fluency required?

What about the use of interpreters in testing? How will this affect the child-tester relationship? Is having an interpreter more or less desirable than using a tester with poor communication skills?

The one specific requirement for testers is that they be state certified. While this is good, it seems possible to give evaluation and placement authority to a team of qualified (by state certification) professionals who have had little or no experience with hearing impaired children. In most cases, it is possible to acquire state certification in an area like psychology or even speech pathology and not have training in working specifically with a hearing impaired population. Although other safeguards are built in to the proposed regulations, this certification requirement falls far short of a desirable level of competence of our population.

Interpretation and placement—The regulations state:

> "In test selection and administration, if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factor the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).
>
> "No single procedure shall be the sole criterion for determining placement.
>
> "The interpretation of the evaluation data and the subsequent determination of the child's educational placement are made by a team or group of persons knowledgeable about the child, the meaning of the evaluation results, the placement options, and the personnel available to provide special education and related services."

This area is critical. If it is enforced, it seems to offer the best possible protection for the hearing impaired child to be competently evaluated and appropriately placed.

Relationship of Assessment to the Education Program—It seems clear from the law and the proposed regulations that the assessment process is not to be regarded in isolation from the education program. The emphasis is on the need for *educational* data, not just intelligence measures. The areas identified for the content of the IEP are more reflective of educational programming that testing data. Tests are generally developed by specialists, not educators, and, vice versa, educators generally develop curricula and instructional materials. Too often the gap can be widened by the jargon of the two separate disciplines. The gap between these two must be successfully bridged. The IEP could be this bridge.

Whatever the specifics of testing and program, an educational translation of the needs of the child in the language of the education program must result. If this will not happen naturally, then a mechanism to facilitate it must be developed and implemented.

Communciation of Test Data—The law intends for the test data to be communicated to parents and others to assist in making programmatic decisions for the child. Several issues arise in this matter of communication. First there is the complexity of the testing process and interpretation of data. Parents have the right of access to test results. Test scores and other data can be misleading unless presented in a context that accurately reflects the interpretations of the data, since so many tests are not standardized for hearing impaired children. The problem is communicating the results in a valuable and clear way.

Record keeping presents the dilemma of keeping the data to reasonable dimensions, but not sacrificing the interpretive and contextual aspects. If a proper balance is not achieved then we could be swept away by paper files on the one hand or valuable information could be reduced to harmful statistics on the other. Either way, the intent of the law would be subverted.

With attention to some of these issues the overall positive effect of PL 94-142 can be realized for hearing impaired children.

IEP: Purpose, Contents, Participants, Processes

by Deninger, Cowen, and Rosen

☐ The Individualized Education Program (IEP) has been described as the heart of PL 94-142. Its provisions are designed to meet the needs of handicapped children through the development of an individually tailored educational program for each child.

The utilization of an individualized education program recognizes differences among students and acknowledges different rates of learning. It also permits adaptation to various styles of learning. The education program provides students with a sense of direction and a blueprint for success. It also insures maximal use of educational resources because all known resources are identified and selected in the developmental stage of the IEP.

Definition of the Individualized Education Program—The Act itself is specific in defining the individualized education program. Section 602 (19) of 94-142 states both conditions and elements required in this program. The proposed regulations (December, 1976) spell out in specific detail the mandatory provisions of the Individualized Education Program in Sections 121a. 220-226.

Conditions of the IEP—The law describes the conditions for the development of the IEP.

It must be a written statement. The agreement between parents and program representatives cannot be an oral one. The IEP needs to be documented so that the school can implement the program and the local education agency (LEA) can maintain such written records as required by the law. A written document is also necessary so that the program can be reviewed and revised, if necessary, at least once annually.

The IEP must be developed in a meeting. This meeting includes the following participants (Section 121a. 223):

1. A representative of the local education agency (LEA), intermediate educational unit (IEU) or a school administrator, who is qualified to provide or supervise special education.

2. The child's teacher(s) who will implement the IEP.

3. The child's parent(s), or surrogate parents if the parents are unavailable or unwilling. (121a. 224, 121a. 414)

4. The child, where appropriate.

5. Other individuals, at the discretion of the parent or agency.

This provision clearly indicates the level of involvement on the part of parents in determining their child's educational placement. The word "develop" indicates that the individual program for the student should be constructed during the IEP conference to the fullest extent possible. It is not the intention of the law that the parents simply have a reactive role, commenting on a program that has already been completed by the school or between the school and the child.

It is important here to point out the significance of the intermediate educational unit (IEU) as it is recognized by the law in this section. The regulations (121a. 4) state that the term "LEA" includes IEU. LEA's have the responsibility for identifying handicapped students and assuring that IEP's have been developed for them; the IEU is also seen as an appropriate agency within the state where an IEP can be developed for a student.

Contents of the IEP—The written outcome of the IEP conference must include each of the following underlined elements as mandated in the law itself.

Statement of the child's present level of educational performance.

It is obvious that a great deal of thought and work needs to take place in assessment and information collection prior to the conference. Assessment data should yield information relative to the child's present performance and needs. Reports will vary, given different school settings, and/or previous educational history. For example, reporting the current level of performance of a preschooler may be of a more developmental nature than reporting the current level of performance of a high school student, where they may be a heavy emphasis on areas such as school transcripts and grades. The term "educational performance" has been interpreted by the law and stated in the regulations (121a. 225 a) to mean not only academic achievement, but social, prevocational and vocational, psychomotor, and self-help skills as well.

Annual goals including short term instructional objectives.

A differentiation must be made between the terms goals and objectives. A goal has a broader and global span. Goals should be based on either assessment data or the child's present performance level and needs. Goals do not have to be behaviorally written.

An objective is more specific and concrete. Objectives should relate to the goals. They should be behaviorally written and measurable. These can be derived from a variety of published sources or from the school curriculum guide, or course goals and objectives, if such have been written and codified. Objectives may be developed as a part of the IEP package or in a seperate package, if the IEP is on more than one level, as in the interpretation by the National Association of State Directors of Special Education, in which the IEP, on the first level, sets long-term educational goal statements, and the development of the short-term educational objectives, on the second level, is left to the person or classroom teacher responsible for implementing the IEP.

Thus, the IEP would include broad annual goals, and shorter term instructional objectives that lead to the accomplishment of those goals. The IEP is seen as serving as the master plan for guiding the student's educational program.

A statement of the specific educational services to be provided and the extent to which the child will be able to participate in regular educational programs.

The regulations (121a. 225(d) explain that specific educational services needed by the child are to be determined without regard to the availability of those services, and may include special education and related services (121a. 4) and any special instructional media and materials.

The individual education plan (IEP) of many deaf children will specify several "related services" on a routine basis. Frequently, it will not be possible for many local public school systems to provide adequate related services due to the orientation to deafness needed by ancillary personnel, scarce resources, and the high cost of specialized education for a low-incidence deaf population. This regulation provision, as it stands, will make it difficult for many public school systems to maintain compliance with the law as specified:

> **"Inadequate education"—The term "inadequate education" means receiving some, but not all of the special educational and related services specified for a handicapped child in his/her individualized education program. (p. 56976, 121a. 219)**

Services should be related to the goals

and objectives. Keep in mind that goals may relate to social, psychomotor, and emotional needs as well as academics. The following may be on-going special and/or related services for a deaf child:

Community—Family—Home Placement
Psychological testing
Residence program
Vocational Evaluation
Personal counseling/guidance
Family counseling
Medical services
Special education evaluations
Advanced study at nearby college
Cooperative education (with nearby school or training program for any subject)
Interpreter services
Total communication approach
Communication evaluation (speech, audiology, manual)
Communication therapy
Audiological equipment
Visual perception training
Hearing aid loans, services, repairs
Tutorial services
Audiological evaluation
Organized after school activities (related to social skills or conceptual development or self-help skills)
Orientation services (for work or alternative education experiences)
Curriculum specifically adapted to reinforce language growth
Transportation
Physical therapy
Parent education

The school setting will determine which kinds of service will be considered regular and which related. *Related* services as defined in the law means transportation and such developmental and support services as speech pathology, audiology, psychological services, physical and occupational therapy, recreation, and counseling. Many of these related services may be considered a routine part of some special programs. For example, speech therapy and auditory training are required by many programs for the deaf. It is important, then, to point out which services are a regular part of the program and which are considered related, or outside the normal scope of a program. There must also be a statement in the IEP of the extent to which the child will be able to participate in regular education programs.

Projected date for initiation of services and anticipated duration of such services.

There should be an indication in the program stipulating when the educational services will begin and when they will terminate. The initiation date will be easier to determine than the termination date, so flexibility is needed in the review and revision of the plan. The regulations also state that names of individuals who will implement the IEP should be included in the IEP.

Appropriate objective criteria and evaluation procedures and schedules for determining at least on an annual basis, whether the instructional objectives are being achieved.

The school unit must be able to demonstrate that it has based its evaluation and revision of the IEP on a system of objective criteria. The annual goals and short-term instructional objectives must be constructed in such a way that they are measured easily. If fair and reasonable objectives are established, it is much easier to evaluate progress toward these objectives at a later date. The law requires that the review and revision of the program occur at least annually, but this does not eliminate the need for periodic reports, especially to parents. If such reports are regular and provide objective information, changes in the student's program will be more easily accomplished between the parent and the educational agency. The law clearly states that prior written notice to the parents or guardians of the child must be sent whenever the agency or unit either proposes to initiate a change in the program or refuses to initiate such a change. It is clear that close cooperation and communication with parents is one key to carrying out this process successfully.

Format of IEP

Some states have done the groundwork in this area and disseminated the forms to the LEA's and schools. Check with your agency. Most forms are brief, from two to four pages in length.

A helpful format might list the following across the top of the page: Content area; Present level (assessment data); Annual goal; Objectives; Personnel, Materials; Objective criteria; Evaluation procedures; Schedule.

Deadline for IEP

PL 94-142 says that each child, age 3-18, will be served by September, 1978. The IEP deadline generally is October 1, 1977, but this varies from state to state. New York requires a May 30, 1977 completion. Check with your agency.

A handicapped child who is identified as needing but not receiving special education should be assessed and an IEP meeting conducted within 30 days. (121a. 222d)

Responsibility

1. SEA has responsibility for all handicapped children in the state, regardless of whether they are in public schools, state schools, or private schools. Each SEA and LEA shall insure that an IEP is provided for each handicapped child receiving special education, regardless of what agency or institution provides the education. (121a. 220)

2. The educational agency is not held accountable if the child does not achieve projected growth as delineated in IEP (assuming that the IEP has been implemented appropriately). (Regs. p. 56970.)

3. LEA has responsibility to:

a. involve parents and to document all efforts if parents cannot attend

   1) telephone
   2) correspondence
   3) visitations to home or job (Section 121a. 224 c)

b. assure that parents understand the proceedings at the meeting by providing interpreters if needed. (121a. 224 d)

c. make records on child available to parents. (121a. 452-459)

d. follow procedural safeguards and engage in due process hearings when invoked. (121a. 401)

4. SEA, IEU, or LEA may assign surrogate parents to protect the rights of the child whose parents are unknown, unavailable, or if the child is a ward of the state. (121a. 414)

5. Parents may initiate independent evaluations (121a. 403) or due process hearings (121a. 406) if they are dissatisfied with the evaluation, IEP, or placement.

The IEP can be viewed as the accountability measure of the Public Law which will assure that a child does not remain static over a period of time and that his teacher is held responsible for his progress, or if there is no progress, accountable for requesting a change in the IEP focus. For both the child and the teacher there is the advantage that a child's IEP is reviewed and updated at least annually. In summary, it protects both the child and the teacher when responsibility is assumed by the teacher to question the plan, to collect data, to modify the plan, and to be involved on a one-to-one basis with the child.

References:

Excellent references on IEP's are
A Primer on IEP's for Handicapped Children
The Foundation for Exceptional Children
1920 Association Drive
Reston, Virginia 22091
$4.95
Functions of the Placement Committee in Special Education
National Association of State Directors of Special Education
1201-16th Street, N.W.
Washington, D.C. 20046
(202) 833-4193
$3.50 each or $3.00 in quantities of 10 or more

Other IEP References:

Audette, Robert H., "Individualized Educational plans: The Promise and the Problems," mimeographed paper, Washington, DC, 1976.

Castle, William E., and Frisina, Robert, "Experience with Individualized Education Programming at the National Technical Institute for the Deaf," mimeographed paper presented to the National Advisory Committee on the Handicapped, Washington, DC, 1976.

Deninger, Michael, and Galloway, Victor, "Individualized Education Program at the Model Secondary School for the Deaf," paper presented to the National Advisory Committee on the Handicapped, Washington, DC, 1976.

Gibson, Robert C., "Individual Education Plans," paper presented to the National Advisory Committee on the Handicapped, Washington, DC, 1976.

Harvey, Jasper, "The Content and Character of the Individualized Education Program," paper presented at the National Advisory Committee on the Handicapped, Washington, DC, 1976.

Jacobs, Linda J., "Report to the National Advisory Committee on the Handicapped Regarding the Individualized Education Program," mimeographed paper, 1976.

Lambright, Gale, "Individualized Educational Programs—Meaning for Teacher Education," mimeographed paper presented to the National Advisory Committee on the Handicapped, Washington, DC, 1976.

Smith, Carol, "The Individualized Education Program as Anticipated by a Parent," mimeographed paper, Washington, DC, 1976.

Vlasak, Jerry, "The BEH Approach to the IEP," a mimeographed paper presented to the National Advisory Committee on the Handicapped, Washington, DC, 1976.

Concept of the Least Restrictive Environment

by Mervin Garretson

☐ Section 618-d-2 of P.L. 94-142 stipulates "an analysis and evaluation of the effectiveness of procedures undertaken by each state education agency, local education agency, and intermediate educational unit to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities." This is the only time the term *least restrictive environment* appears in the law.

Cognizant of its educational advantages and benefits to children of a number of disability groups, Gallaudet College supports the general thrust of the law which encourages, to the maximum extent appropriate, placement of handicapped children in regular school settings with children who are not handicapped. However, with specific reference to the disability of hearing impairment with its severe communication handicap, the College is aware of and sensitive to formidable questions which may negate the public school setting as the most desirable place for the education of many deaf children.

However attractive we find the surface concept of integration or mainstreaming, it is vital that least restrictive alternative considerations do not result in a hierarchy which tends to stigmatize or discriminate against appropriate program selection. A broad continuum with a variety of educational options needs to be maintained, particularly for the deaf child.

To determine the least restrictive environment for a deaf child according to comprehensive educational, psycho-social, and communication needs, it is necessary to assess (1) the nature and reality of deafness and the communication barriers imposed by the disability, (2) the curricular aspects of the instructional program itself, (3) parameters of the unwritten curriculum, and (4) delivery of instruction to the deaf child.

First, because hearing loss is relatively invisible, the general public, including public school and special education personnel, tend to be quite naive about the multiple circumferences involved in information acquisition and sharing. Deafness involves much more than the inability to hear. It is difficult to gauge the full severity of the handicap. Hearing impairment separates the child, not from things like architectural barriers, but from people. Therefore in a regular public school setting it is unlikely the deaf and hearing will be able to function together in a learning situation. Deaf children may well be isolated islands in the mainstream, physically present but intellectually absent. The blind or orthopedically handicapped may hear the teacher, their schoolmates, the visiting speaker, the educational film, the guide on a field trip, the casual conversations during recess, lunch hour, on the playground, and everywhere else, including radio and television, during nonschool hours; the deaf child simply does not hear.

Curriculum approaches in the regular public school are much different from those in a special class or program geared for deaf children. Effective educational programming requires insight into hearing loss and how it compounds all other learning problems. A realistic individualized education plan (IEP) may preclude placement in a regular public school because of many factors:

1) It is difficult to meet the needs of each deaf child even by forming educational groupings based on hearing loss alone;

2) Discrepancies between age and academic achievement of the hearing-impaired child may forestall proper placement in a fully or even partially mainstreamed situation;

3) The use of interpreter-tutor setups does not always meet the full educational needs of deaf children;

4) The psycho-social well-being of the deaf child may be jeopardized in a situation where effective communication is likely to break down. Peer-group interaction may be minimal at best.

5) A low student-teacher ratio is necessary for adequate communication and interaction, which is heavily dependent upon the visual, rather than auditory sense.

6) Regular public school teachers would need additional preparation and certification as teachers of the deaf to adequately meet the needs of the child.

7) A deaf curriculum track may be called for by the IEP; how would this affect class discussion and participation?

8) Curricular emphases on vocabulary and on syntactical and idiomatic language development differ for the deaf child.

9) A separate curriculum which would not be applicable to the non-handicapped and handicapped-but-hearing child, is needed in the area of communication arts: programs in speech and lipreading, auditory training and amplification, and manual communication.

10) Program and IEP evaluation requires personnel trained, certified, and knowledgeable about hearing impairment and what it encompasses.

11) A minimum population base of deaf children is mandatory for effective and efficient programming; low incidence problems and the need for intensive, high cost auxiliary services may well mean exorbitant costs for the local public school.

Most public school settings are ill-equipped to meet the unwritten curriculum needs of the deaf child. At least 90% of all learning takes place out of the classroom. Some after-school considerations which are a necessary part of special schools and programs for deaf children, involve the use of captioned films, captioned video tapes, captioned in-house television and radio scripts, all sorts of visuals, teletypewriter phones, peer-group socializing, competition, social skill development and opportunities for leadership. In short, a totally communicating environment is most crucial at each stage of a deaf child's life.

Effective delivery of instruction to the deaf child requires all kinds of supportive service personnel, expensive technological and audio visual media, some architec-

Deaf students enjoy a mealtime conversation in an environment of Total Communication.

tural modifications, skilled communicators, evaluators, and counselors, which may well rule out an appropriate educational plan for the deaf child in most public school settings.

Carpets, acoustic tile, special amplification devices, use of television and computers for instruction, teletypephones, and other hardware are essential components for adequate delivery of educational services to deaf children.

Teachers, audiologists, school psychologists, guidance counselors, social workers, work study specialists, aides, librarians, media people, and other personnel in good programs with hearing impaired children are all able to communicate and emphathize with the deaf child. Even the principal, who may need to discipline or talk to the deaf student, should be able to do so without a third-party interpreter.

Given all of these factors, it is our position that programs oriented toward deaf children with comprehensive services and a communicating milieu, indeed provide the least restrictive environment for the deaf child.

Deafness and Implications For Mainstreaming

by Roslyn Rosen

☐ Conceptual development and communication skills for normal children are by-products of the "unwritten curriculum." Mervin Garretson, in an article in the Jan. 1977 *Deaf American* explains that out of the 8,760 hours possible in a full year, only 720 hours or 8% are actually spent in the classroom. The rest is consumed by vacation, sleeping, boob-tube watching, meals, personal and social activities, and peer-interaction time. It is the "free time" that contributes to the unwritten curriculum or incidental learning that becomes the building blocks of a basic education. Formal schooling only serves to develop and refine this for normally hearing children. In a speech at the Michigan School, Garretson quoted Henry Steele Commager, "It is the community (family, farm, government, playground, churches, labor unions, newspapers, radio and television) which performs the major job of education, not the schools." "So," Garretson continued, "for the deaf child, where is the community? Nine times out of ten the hearing community is a physical presence by a mental blankness."

PL 94-142 Regulations (1976) proposes to define hearing loss as follows:

> "**Deaf** means a hearing impairment which is so severe that a child's hearing is non-functional for the purpose of educational performance."
>
> "**Hard of hearing** means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance . . ." (Section 121a.4)

It must be kept in mind that deafness is the handicap that allows a child to see the hustle-bustle of life without permitting him access to its meaning. "The hearing impaired child is in a minority milieu—socially and in communication" (Delgado, 1975).

In a regular public school, the situation of the deaf child cannot be compared with that of the blind or orthopedically handicapped child because the blind or orthopedically handicapped child can hear what is going on around him. The simple fact is that the deaf child does not hear. The implications of this fact are self-evident and far-reaching.

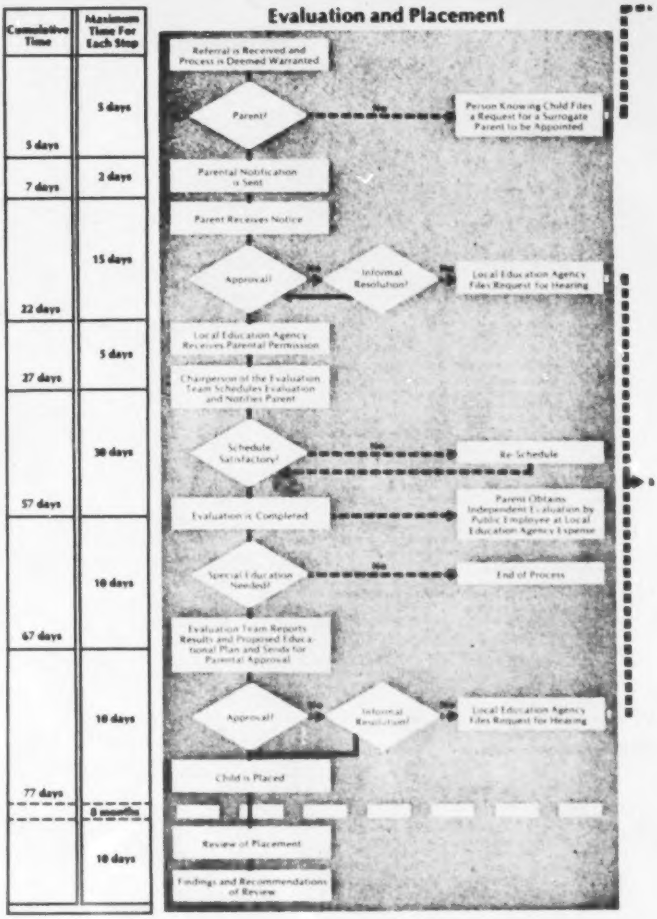
PL 94-142 includes in the scope of educational performance not only academic achievement, but also social adaption, and prevocational, vocational, psychomotor, and self-help skills.

Yet, if a deaf child is placed in a regular classroom (the so-called least restrictive environment) he may not only miss out on the academic milieu, but also the social and emotional milieus. Is sitting with the family at the dinner table, while mentally isolated and not comprehending, being in the least restrictive environment? Is belonging to the yearbook club, yet not participating in discussions or contributing to the development of the publication, the least restrictive environment? Is eating lunch alone surrounded by hearing classmates the least restrictive environment? "Putting hearing children and hearing impaired children together is not enough; proximity is not the same as integration. Nowhere is that more true than for hearing impaired pupils." (Birch, 1975)

Other factors that play an important role in the desirability of mainstreaming, are:

1. Parental concern and desire for normalcy.
2. Professional educators in public schools who are unaware of the needs of the deaf but who feel the obligation to serve all children in their districts.
3. Assumption that mainstreaming is less costly. (Actually, appropriate mainstreaming, because of the highly specialized services needed and the low incidence of deafness, will not be cheap.)

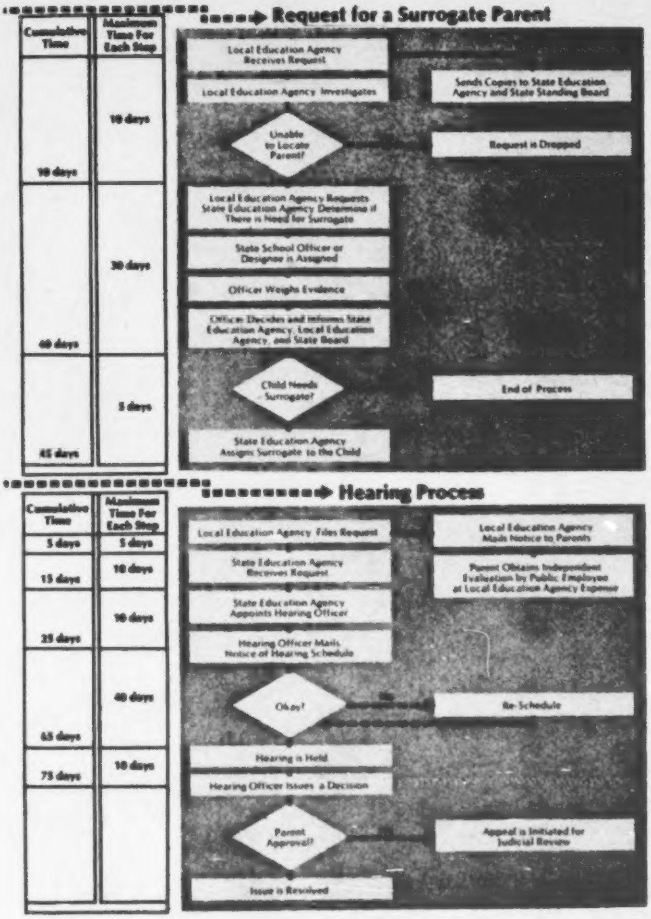
The Conference of Executives of American Schools for the Deaf has developed a generalized formula for predetermining educational placement corresponding to specific hearing loss.



Evaluation and Placement

Cumulative Time
Maximum Time For Each Step
5 days
5 days
2 days
7 days
15 days
22 days
5 days
27 days
30 days
57 days
10 days
67 days
10 days
77 days
8 months
10 days
Referral is Received and Process is Deemed Warranted
Parent?
No
Person Knowing Child Files a Request for a Surrogate Parent to be Appointed
Parental Notification is Sent
Parent Receives Notice
Approval?
No
Informal Resolution?
No
Local Education Agency Files Request for Hearing
Local Education Agency Receives Parental Permission
Chairperson of the Evaluation Team Schedules Evaluation and Notifies Parent
Schedule Satisfactory?
No
Re-Schedule
Evaluation is Completed
Parent Obtains Independent Evaluation by Public Employee at Local Education Agency Expense
Special Education Needed?
No
End of Process
Evaluation Team Reports Results and Proposed Educational Plan and Sends for Parental Approval
Approval?
No
Informal Resolution?
No
Local Education Agency Files Request for Hearing
Child is Placed
Review of Placement
Findings and Recommendations of Review

From A Primer on Due Process, published by the Council for Exceptional Children [illegible] Used with permission of CEC.


Request for a Surrogate Parent
Cumulative Time
Maximum Time For Each Step
Local Education Agency Receives Request
Local Education Agency Investigates
Sends Copies to State Education Agency and State Standing Board
10 days
Unable to Locate Parent?
Request is Dropped
10 days
Local Education Agency Requests State Education Agency Determine if There is Need for Surrogate
State School Officer or Designee is Assigned
30 days
Officer Weighs Evidence
Officer Decides and Informs State Education Agency, Local Education Agency, and State Board
40 days
Child Needs Surrogate?
End of Process
5 days
45 days
State Education Agency Assigns Surrogate to the Child
Hearing Process
Cumulative Time
Maximum Time For Each Step
5 days
5 days
Local Education Agency Files Request
Local Education Agency Mails Notice to Parents
10 days
15 days
State Education Agency Receives Request
Parent Obtains Independent Evaluation by Public Employee at Local Education Agency Expense
10 days
25 days
State Education Agency Appoints Hearing Officer
Hearing Officer Mails Notice of Hearing Schedule
40 days
Okay?
Re-Schedule
65 days
Hearing is Held
10 days
75 days
Hearing Officer Issues a Decision
Parent Approval?
Appeal is Initiated for Judicial Review
Issue is Resolved

Pupil Characteristics in Mainstreaming—It is interesting to survey the literature and note the pupil characteristics stated as essential for successful mainstreaming. These range from:

"Active utilization of residual hearing and full-time hearing aid usage, if prescribed," to "Demonstrated social, academic, cognitive, and communicative (auditory and oral) skills within the normal range of behaviors of hearing classmates," to "Intelligible speech and the ability to comprehend and exchange ideas with each other through spoken, written and read language," and "Increased confidence and independence in giving self-direction to the tasks at hand."

G. Nix in *Mainstream Education for Hearing-Impaired Children and Youth* (NY, 1976) summarized additional criteria gleaned from the literature: early identification of hearing loss, early training, functional ability, social stability, teacher and peer attitude and acceptance, interaction skills, parental involvement, and supportive administration and personnel.

Katz, Mathis and Merrill suggests that the child may respond well in an integrated setting if the following questions formulated by Brill in *Administrative and Professional Developments in the Education of the Deaf* can be answered in the affirmative:

> 1. Does the pupil use the receptive and expressive skills of communication (speechreading, speech, language, reading, and writing) well enough to function successfully in a regular class program?
>
> 2. Are the pupil's social and emotional maturity levels average or above the average of hearing pupils in the regular class?
>
> 3. Can the pupil direct his attention to the assigned work and follow the directions given for doing the work?
>
> 4. Is the regular class enrollment small enough so that the teacher will have an opportunity to devote some of his time to helping the deaf or severely hard of hearing pupil solve his problems?
>
> 5. Will the deaf or severely hard of hearing pupil be seated in the regular classroom so that he has a good view of the teacher's face when instruction is being given and of the pupils' faces when they are speaking? Will sound amplification be provided if the pupil can profit from its use?
>
> 6. Are the parents and other members of the family interested in having the deaf or severely hard of hearing pupil assigned to a regular class to the extent of helping him with his home assignments? Will they help him develop solutions to problems encountered in adjusting to the regular class environment?
>
> 7. Are the pupil's confidence in his ability to function successfully in a regular class and his determination to do so sufficiently great?
>
> 8. Is the pupil willing and reasonably eager to be assigned to regular classes for instruction?
>
> 9. Is the pupil's ability to learn, as indicated by his test scores, average or above the average of the pupils in the regular class?
>
> 10. Is the pupil's chronological age within two years of the average age of the pupils in the regular class?
>
> 11. Will the pupils in the regular class accept the deaf or severely hard of hearing pupil as a member of the class and will they give him the same consideration they expect to give each other?
>
> 12. Is the teacher of the regular class informed regarding the problems faced by a pupil as a result of his lack or severe loss of hearing, and is the teacher willing and prepared to employ instructional practices and procedures that should be most helpful to the pupil?

From the preceding criteria, it becomes evident that great importance is placed on auditory and communication skills as key factors for successful mainstreaming. Countless research supports the fact that lipreading is mainly guesswork, that prelingually and profoundly deaf children rarely attain normal speech, and that hearing aids cannot make the deaf child hear and discriminate speech normally. Thus, mainstreaming seems to be a viable alternative for those children with mild to moderate hearing losses. Does this mean that the prelingually and profoundly deaf child is automatically relegated to special schools?

Not so, says Holcomb (1975). In the Holcomb Mainstreaming Model, total communication and utilization of interpreters render hearing, speech, and lipreading far down the list of the criteria for the selection of children to be mainstreamed at the Sterck School in Delaware. When selected for mainstreaming, the deaf child is put in a class with hearing children only when he has a tutor-interpreter who renders into signs what the regular classroom teacher says. The tutor-interpreter also helps the deaf and hearing children in the class by tutoring or teaming up with the regular teacher. Thus, instead of being dumped into a class with 30 hearing children and not being able to understand the teacher, the deaf child is given the necessary support, i.e., the interpreting and tutoring needed to enable him to grasp and keep up with classroom activities.

Additionally, intensive orientation, in-service training, manual communication classes, special services, and support personnel are routinely provided to the regular teachers and hearing children in order to facilitate mainstreaming for the deaf. In this model, it is not the deaf child who must fit the system, but rather the program that must meet the child's needs.

The National Education Association takes an advocacy view on mainstreaming, but has spelled out the circumstances under which it should occur. Its position is stated in the following Resolution 75-27 as passed by the 1975 Representative Assembly:

> The National Education Association will support mainstreaming handicapped students only when:
>
> a. It provides a favorable learning experience both for handicapped and for regular students.
>
> b. Regular and special teachers and administrators share equally in its planning and implementation.
>
> c. Regular and special teachers are prepared for these roles.
>
> d. Appropriate instructional materials, supportive services, and pupil personnel services are provided for the teacher and the handicapped student.
>
> e. Modifications are made in class size, scheduling, and curriculum design to accommodate the shifting demands that mainstreaming creates.
>
> f. There is a systematic evaluation and reporting of program developments.
>
> g. Adequate additional funding and resources are provided for mainstreaming and are used exclusively for that purpose. (NEA Briefing Memo, 1975)

Individual Placement Decisions—All of the preceding criteria enter the picture when placement decisions are made, usually by the CORE evaluation team, or after the child's goals and special needs are identified in his Individualized Educational Program. The community, schools,

Gallaudet College's Task Force on PL 94-142 during a working session. L. to r., Al Pimentel, director of Public Service Programs; Nancy Cowan, MSSD communications specialist; Michael Deninger, associate principal of MSSD; Ann Champ-Wilson, parent and community representative; and Dr. Ray Trybus, director, Office of Demographic Studies.

At the opposite end of the PL 94-142 Task Force worktable were Mary Ann Locke, executive director of the International Association of Parents of the Deaf; Dr. Marvin Garretson, assistant to the dean, Pre-College Programs; Ramon Rodriguez, instructor in education; Roz Rosen, coordinator of the Task Force; and Jack R. Gannon, director of Alumni and Public Relations.

and resources must also be investigated to determine whether they can fit the bill in terms of meeting the deaf child's educational, social, and emotional needs.

It would be impossible to come up with hard and fast rules for determining which educational placements would be appropriate for which kinds of hearing impaired children without taking into consideration the assets and liabilities of the individual child, his family, his community, and the different educational alternatives on the continuum. To do so otherwise would imply prophecies based on labels.

Mainstreaming is but one of the many options which have been identified in providing optimal services to all handicapped children. PL 94-142 says that programs are not arbitrarily chosen from among those on the continuum—but rather programs will be provided which are appropriate to the individual needs of individual children.

References:

Andelman, F. "Mainstreaming in Massachusetts Under Law 766." *Today's Education.* March-April 1976.

Birch, J. *Hearing Impaired Children in the Mainstream.* Virginia. Council for Exceptional Children. 1975.

Brill, Merrill and Frisina. "Recommended Organizational Policies in the Education of the Deaf." Conference of Executives of American Schools for the Deaf. December 1973.

Brown v. Board of Education, 347 U.S. 483 (1954).

Delgado, G. "Mainstreaming—A Perspective." *Mainstreaming and Communication Training for the Hearing Impaired.* Delaware. Stark School for the Hearing Impaired. 1975.

Frisina, D., Brady, J., Adams, E., and Brill, R. "Report of ad hoc Committee on definitions of Deaf and Hard of Hearing." *American Annals of the Deaf.* 1975, *120*, 5, 509-514.

Holcomb, R. "Comments on Mainstreaming." *Mainstreaming and Communication Training for the Hearing Impaired.* Delaware. Stark School for the Hearing Impaired. 1975.

Katz, L., Mathis, S., Merrill, E. *The Deaf Child in the Public Schools: A Handbook for Parents of Deaf Children.* Illinois: The Interstate Printers and Publishers. 1974.

Kaufman, M., Gottlieb, J., Agard, J., and Kukic, M. *Mainstreaming: Toward an Explication of the Construct.* Washington, DC. BEH. Project PRIME. 1975.

Meisegeier, C. and King, J. *The Process of Special Education Administration.* Intext Educational Publishers. 1970.

Nix, G. *Mainstream Education for Hearing Impaired Children and Youth.* New York: Grune and Stratton. 1976.

Vernon, M. & Prickett, H. "Mainstreaming: Issues and a Model Plan." *Audiology and Hearing Education,* Feb./Mar. 1976.

Weintraub, F., Abeson, A., Ballard, J., & LaVor, M. *Public Policy and the Education of Exceptional Children.* Virginia. Council for Exceptional Children. 1976.

Due Process Rights

by Roslyn Rosen

☐ Constitutional rights of children do not cease when they step inside the schoolroom door. Questions of "rights" for public school students, often through judicial intervention, have been raised in relation to freedom of expression, personal rights such as hair length and dress regulations, marriage and pregnancy, police intervention, corporal punishment, discipline, and confidentiality of records. These rights are also extended to handicapped children; however, "none is more persuasive than the right to due process which governs decisions regarding identification, evaluation and educational placement." (Abeson et al, 1977)

Misclassification of children and exclusion of handicapped children from free, appropriate education are frequently made with little or no regard for the due process of the law and without parental knowledge, input, or consent. The right to due process is guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution: "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S., nor shall any state deprive any person of life, liberty, or property without due process of law." Public Laws 93-380 and 94-142 reaffirm state responsibility for ensuring that due process procedures become available to handicapped children and their families.

Due process standards in identification, evaluation, and educational placement of handicapped children, as stated in Section 615 of PL 94-142, Subpart E, Sections 121 a. 400-493 of the proposed regulations, and Section 84.36 of the regulations for Section 504 of the Vocational Rehabilitation Act of 1974, include the following minimal provisions:

1. Right for parents to examine child's records (121 a. 402)
2. Independent educational evaluation (121 a. 403) If a parent desires an independent educational evaluation and secures an agreement from the LEA, the costs of the evaluation will be at public expense. Parents, if not given LEA approval, will need to pay for the evaluation; results of the evaluation, if in compliance with state standards, may be utilized for IEP development or as evidence in due process hearings.
3. Written notification and written parent consent prior to change in educational placement or conduction of evaluation (121 a. 404). The notice must: (121 a. 405)
    a. Explain procedural safeguards
    b. Describe the action proposed or refused and justify it
    c. Describe each evaluation procedure and data, and other factors involved
    d. Be in native language of the parents, in easily understandable language, or communicated in person to the parents in their mode of communication. If parents refuse to permit the evaluation or the change in educational placement, the LEA can request a due process hearing.
4. Impartial due process hearing (121 a. 406) Parents may initiate a hearing if they do not agree with the identification, evaluation, placement, or program for their child. The hearing must be arranged by the SEA or LEA.
5. Impartial hearing officer (121 a. 407) The hearing must not be conducted by LEA or SEA employees involved in the education or care of the child, or by any person whose personal or professional interest would conflict with his or her objectivity in the hearing.
6. Hearing Rights (121 a. 408) Any party to a hearing has the right to:
    a. Be accompanied and advised by counsel and other individuals
    b. Present evidence, cross-examine, bring witnesses
    c. Obtain a written or electronic verbatim record of the hearing
    d. Obtain written findings of facts and decisions
    (e. Be provided with an interpreter in order to understand and participate in proceedings. This right is implied by language stating the responsibility of the SEA and LEA to ensure that the party understands and participates in all proceedings. Ed.)

9. Surrogate parents (121 a. 414) The SEA or LEA must assign surrogate parents when a child's parents are not known, unavailable, or when a child is a ward of the state. Surrogate parents should be objective and knowledgeable, insuring adequate representation of the child's rights and needs. Surrogate parents cannot be LEA or SEA employees in educational programs. (Gallaudet furthermore recommends that surrogate parents be able to communicate with the child in his/her native mode of communication. Ed.)

Due process also gives clout to schools to take action on behalf of the child when his/her parents resist or do not cooperate.

Frequently, unresolved issues because of ineffective communication between the school and the home lead to crisis-stage arguments and hearings. The following will enhance communication and cooperation:

1. Casual after-school parent-school meetings or other informal conversation.
2. Parental involvement in educational decisions affecting their child.
3. Parent and professional awareness of their rights and responsibilities and those of the child.
4. Provisions for parent organizations, parent education, and parental input to educational decision-making.
5. Parental access to the administrative staff.
6. Administrative procedures that are clearly written, codified, and accessible.

The benefits of such open and honest communication and cooperation may include increased awareness of the individual needs of children; the abilities, limitations and needs of educational programs; and accountability and responsibility to act openly in the best interests of the child.

An excellent reference book to have is:

Abeson, A., Bolick, N., & Hass, J. *A Primer on Due Process: Education Decisions for Handicapped Children.* Council for Exceptional Children, 1920 Association Drive, Reston, Virginia 22091. 1977. $4.95.

Parent Advocacy: Being a Part of the Team

by Ann Champ-Wilson

☐ For many years, parents of handicapped children have been trying to get a better education for our children. We have also wanted to be involved in the decision-making process which determines our children's destiny. After many attempts to convince educators that we are a valuable resource, many of us have given up and taken a low key position, and in many cases become very frustrated individuals.

But now, for many families it is not too late. Public Law 94-142 exists and must be complied with, if programs are to continue to receive federal funds. PL 94-142 provides for every handicapped child to receive an appropriate education in the least restrictive environment, and at no cost to his or her parents. This law also provides for parents to be involved in the development of our child's individualized educational program. Further, we are entitled to take advantage of the due process procedure if we are not satisfied with our child's placement.

The law is only as good as the people who will make sure that the law is followed. This means that parents will have to take on a strong advocacy role if the law will mean anything for our individual children. People who work in the educational system are only human, and they may not pursue us, if we don't pursue them. These are our children and it is our responsibility to fight to see that the law gives them everything they are entitled to receive.

There will be times when we will feel what we have to say is not important. Not true. Our real-life experiences that occur within the family unit are a vital link in the education of the whole child. It is our responsibility to share our expertise with "professionals." Parents are professionals in our own right and we should think of ourselves as such. Being part of the team means that we contribute along with educators, counselors, and administrators to the educational and social development of our children. Become an advocate for change, join the team.

Parent Advocacy Subcommittee

by Cathy Moses

☐ The point of view of the Parent Advocacy Subcommittee of the Gallaudet PL 94-142 Task Force is that the ultimate responsibility for the care and for the decisions about education of deaf children lies with their parents. Research regarding factors affecting educational attainment stress the overriding importance of family background and atmosphere. Recognizing that we do not have all the answers, we believe that an effective educational program requires an active partnership between the educator and the parent.

Therefore, the subcommittee has adopted the following three activities: **(1) collecting information sources such as organizations, materials, and books** that can be useful to parents who are trying to get their child into an appropriate program, or trying to oversee their child's educational progress. Emphasizing a "how-to" approach, the materials focus on understanding what the law means, participating in an IEP meeting, responding to an inappropriate placement, making an appeal, organizing a useful parent's group, etc.; **(2) developing ways of effectively disseminating information.** In addition to responding to requests for information, a Parent Information Kit is being developed which will be available by the end of June or shortly thereafter for interested parents, or parent groups such as IAPD meetings, local PTA's, etc.; and **(3) developing materials that would specifically address the situation of the deaf child.** This would be a guide for parents on how to use PL 94-142 in securing an appropriate educational placement and required related services.

The Task Force also recognizes the need for outreach, or contacting schools about the need to develop parent education programs and strongly participating parent groups, and serving the schools as consultants in organizing workshops or programs related to this area.

PL 94-142 and Advocacy

by Roslyn Rosen

☐ The Bureau of Education for the Handicapped, in developing the regulations governing PL 94-142, did an outstanding job of planning, coordinating, and involving many other persons and programs. Regulations Input Teams and public testimonies in regional hearings contributed towards the shaping of the document, which will be finalized this summer. The law has provisions for continued and structured public participation in state plans and on the State Advisory Panel.

State Plan

Prior to submitting state plans to the Commissioner of Education, and prior to adoption of an annual program plan, the State Education Agency (SEA) is required to hold public hearings, to give adequate notice of such hearings, to announce it in newspapers or other media, and to assure opportunity for public participation. (Section 612(2)(d), (Section 121 a. 130) of the Regulations. 612 (7) of the Act.) Do you know whether or not the state plan in your state has been finalized? Are the announcements in the newspapers or in captions on TV? Do deaf people and parents attend those hearings and contribute input? Do deaf people request interpreters in advance, and are they provided?

State Advisory Panel

Each state is required to establish a State Advisory Panel consisting of handicapped individuals, parents, educators, and administrators. (Section 613 (a)(12)) of the Act. Sections 121 a. 550-552 of the regulations.) This panel will advise the state of unmet needs, comment on educational policies, and assist the state in developing and reporting data and evaluation. Reports and minutes are made public upon request. Meetings must be announced and open to the public.

Do you know if deaf children are appropriately represented on the panel? Do you know whom you may contact on this panel for information or input? Do you attend meetings and request interpreters? Do you request copies of the minutes? Do you have a relationship with any panel member or LEA or SEA officer?

Equal Employment Opportunity

Section 606 of the Act requires "each recipient of assistance under this Act to employ and advance in employment qualified handicapped individuals in programs assisted under this Act." This is also covered by Section 504 of the Rehabilitation Act of 1974. Having employees, teachers, and professionals who are deaf in any program serving deaf children is both valuable and imperative. Adult deaf models serve as a source of identification and inspiration as well as possess the empathy and communication skills needed to promote the educational growth of deaf children. Lack of deaf employees in programs where deaf children are enrolled is another area for continued advocacy. The Office of Civil Rights, the Bureau of Education for the Handicapped, the SEA's and LEA's are among the appropriate places to address grievances relative to employment and barriers (following paragraph).

Removal of Architectural Barriers

The federal Architectural Barriers Act of 1968 requires federally funded programs to meet certain accessibility standards. This is reinforced by Section 607 of PL 94-142 and Subpart C of Section 504 of the Rehabilitation Act of 1974. Accessibility for deaf persons may be interpreted to mean the elimination of communication barriers. Installation of improved acoustics, lighting, and teletypewriters, and the provision of interpreters and captioned or scripted media will enhance accessibility for deaf persons of all ages to a variety of classes, programs, and public meetings that are funded with public money.

Advocacy Training

In order to become an advocate, a clear understanding of problems, rights, policies, and processes is necessary. The following steps are suggested for effective involvement and maximum effectiveness.

- **Understand the governmental processes, requirements, and timelines.**
- **Get the right interpretation of the laws and regulations. Get second opinions.**
- **Keep in touch with issues and developments in the field of education of the deaf.**
- **Understand your rights. Rely on your gut reaction.**
- **Ask for clarification and information in writing. This gives you something to hang your hat on.**
- **Develop questioning techniques.**
- **Develop good, solid relationships with the people responsible for making or developing decisions. Develop protocol techniques. Informal action and lobbying is the heart of the governmental process.**
- **Go or send a representative to public meetings and hearings.**
- **Recognize excuses given to cover inaction.**
- **Pool resources. Get experts, professionals, parents and deaf adults organized and working together.**
- **Stay in touch with various groups. Keep others informed.**
- **Join professional, parent, and deaf organizations. Subscribe to their journals.**
- **Communicate your concerns or problems in writing. If you communicate in person or over the telephone, follow up with a letter.**
- **Inform the newspapers and media of your group's advocacy actions.**

Specific Advocacy for Parents

- **When you request (in writing) a specific action by the school, LEA or SEA, give them a reasonable deadline (not more than 30 days) to respond.**
- **Do not assume that the supervising teacher or principal has the authority to make decisions. When in doubt, deal directly with the superintendent, LEA, or SEA. Do not be afraid to go over their heads, but do not step on their toes in the process.**
- **If your requests are denied or resisted, write a request for a due process hearing to resolve problems relative to placement or program services.**
- **Involve experts and advocacy groups if needed.**

Share publications, letters, and responses with the Gallaudet PL 94-142 Coordinator if possible and appropriate.

Proactive advocacy means keeping on one's toes, being aware of developments, and getting involved by influencing and educating people and the decision makers so that they may encourage, develop, and implement policies and programs that meet the needs of the deaf.

Reactive advocacy means springing into action after problems are identified and marshalling forces in attempts to eliminate or change inappropriate plans, policies or programs.

Reactive advocacy can be more difficult and emotional than proactive advocacy. It is much better to assume the role of Smokey the Bear and alert people to the rights and needs of deaf children, than to wear the shoes of the fireman and fight raging fires. Eitherway, advocates are needed, and parents, handicapped adults, and professionals can carry the banner higher and better than professionals alone.

Leadership and advocacy training workshops are conducted by Gallaudet College and the National Association for the Deaf. Write to them for information.

References:

Best, E. "Know and Protect Your Child's Rights: A Parent's Guide." AMICUS, National Center for Law and Handicapped, Inc. vol. 2, No. 3, April 1977.

Biklen, D. *Let Our Children Go: An Organizing Manual for Advocates and parents.* Syracuse, N.Y.: Human Policy Press, 1974.

Simering, G. "Inter-Governmental Activism for Educators and Parents." Keynote speech, Third Annual In-Service conference of National Association of Administrators of State and Federal Programs, New Orleans, March 1977.

Providing an Appropriate Educational Environment

by Edward C. Merrill, Jr.

☐ Gallaudet College supports the "Education for All Handicapped Children Act" on the premise that many handicapped children and young people have not been properly identified and have not subsequently been provided an appropriate educational opportunity. The law requires each local education agency in a state to identify handicapped students, to diagnose their needs, and to provide an appropriate education under a "state plan." Thus, local educational systems must work with parents in providing appropriate placement for a handicapped child, and must assume responsibility for evaluating that child's progress.

PL 94-142 emphasizes that local public school systems should endeavor to accept handicapped children. This law makes it encumbent upon the local school system to teach the handicapped child with and among normal children to the extent that this is feasible and to the extent that this represents the most desirable placement of the child. This, also, is a desirable policy.

Gallaudet College wishes to suggest four principles which should govern local and state educational authorities, as well as parents, in the placement of deaf children and young people.

Program Variety

Handicapping conditions generally result in a wider range and greater variety of educational needs. Deafness never really affects each person the same way. Hearing loss exists in degrees and kinds, and persons adapt in different ways to it. If persons who have severe hearing losses, therefore, are to be served well, they will have access to varied educational programs. To assume that a single type of program will best suit a group of hearing impaired children is to deny a high percentage of children in that group the most appropriate educational environment. This paper wishes to stress the following principle: *The educational needs of deaf children and young people will be best met by having accessible to them a wide variety of educational environments.* If a wide variety of educational environments are accessible to deaf children and young people, each one can then choose the program which best suits his or her need, in which he or she can learn to his or her maximum ability.

Special Programs

Deafness is a severe handicapping condition. Not only does it constitute the loss of one major sense, but it is the loss of that sense needed most in the typical school environment—the ability to hear. Although public schools have improved considerably in the last decade with visual presentations, the environment of a public school is primarily based on hearing and speaking; that is, learning is all-dependent on the normal communication process. The local public school system, therefore, must develop visual communication methods, especially total communication, as a basis for providing an appropriate educational environment for deaf young people.

The ultimate determination of the placement of a deaf child should be the kinds of special needs he has and how these can best be met. Often the most appropriate educational environment for a deaf child will be a special program which provides all necessary learning services. Therefore, a second principle is: *A deaf child should have access to all special services which are required for his normal educational growth and development.* Any placement in which a child is denied these special services results in restricting his or her educational environment, which is in violation of the least restrictive environment concept of PL 94-142.

Freedom of Choice

PL 94-142 describes a range of programs and services which should be available to all handicapped children. These range from total integration in a local school classroom to programs which call for special classes and partial integration to placement in special programs either in local or residential schools. The law requires that an effort be made to place the handicapped child with and among normal children; however this placement depends on a number of other considerations, including understanding and agreement on the part of the parent. The parent should be involved in the decision on where to place the child and also has the right to a hearing if he or she does not approve of the placement, program, or services available to his or her child.

The law has its origin in legal decisions in Pennsylvania, and elsewhere, where discrimination existed in the form of nonaccess and outright exclusion of handicapped children from local, free, public education programs. In the opinion of Gallaudet College, this is a crucial point for parents and local administrators to consider. The weight of legal opinion is on the matter of access to local education programs. In none of the various legal decisions leading to PL 94-142 do we find emphasis on excluding or limiting continued access to special schools and centers as a viable education option, but, rather, the emphasis in all court cases has been on extending the options for children and their families to include local education agencies.

The position of Gallaudet College is and has always been that parents and children should have freedom of choice in the selection of educational programs. The law as currently stated provides a choice, but tends to place unfortunate restrictions on the parent. It is imperative that parents know their rights under the law. An important principle in providing an appropriate educational environment for deaf children and young adults is that *parents with their child should have access to and freedom of choice of educational programs.*

Financial Considerations

Special schools and centers often are viewed as being an added educational expense to state or local education agencies. The assumption sometimes made is that the local neighborhood school would be able to accommodate the needs of deaf children at greatly reduced per capita cost to the state. While the provisions of PL 94-142 include greatly increased financial support to the local education agency, sufficient funding will continue to be a concern as local education agencies respond to the provisions mandated in the law. Appropriate educational services for deaf children are expensive. Special schools and centers clearly document the high cost involved. Routinely in the education of deaf children appropriate services include speech pathologists, audiologists, psychologists, and counselors who are able to communicate with deaf children, and adequate numbers of interpreters for extra curricular activities, especially for elective courses on the junior and senior high school levels. *The local education agency will find the cost of appropriate education services for deaf children usually equalling and often exceeding the per capita cost for the same quality of education offered by the special school or center with larger numbers of children.* It is the position of Gallaudet College that the high cost of education of deaf children shall not be a limiting factor. If the local education agency is to carry out its re-

sponsibility it must do so fully and without regard to additional cost. The only acceptable alternative would be to give positive consideration to the larger array of services offered by other educational programs, including special schools and centers.

In Summary

Gallaudet College supports the Education for All Handicapped Children Act of 1975 (PL 94-142). The thrust of the act in identifying and providing adequate education for all handicapped children is necessary and long overdue. Gallaudet College applauds provisions in the act which require local public schools systems to accept and provide for handicapped children where their placement in such an environment is to their best interest. We call attention to the fact that the law addresses itself to all educational resources of a state, including special programs and residential agencies; these also are resources which are available to handicapped children, especially deaf children.

The College stresses four principles which should govern the establishment of appropriate educational environments for deaf children and youth: availability of a wide variety of educational environments; no diminution in the level of educational services needed by deaf children and young people; freedom of choice on the part of parents and children in the selection of the most appropriate educational environment; and consideration of the fact that education of the deaf is expensive, with no reduction of costs occurring when appropriate services are included in the local education agency.

Expanded Roles for Special Schools

by Roslyn Rosen

☐ Special state schools and programs for the deaf that have the expertise, experience, and personnel can assume a leadership role in the field of education of the deaf. With the advent of PL 94-142, the special school needs to re-examine its traditional role and to show that it is a social system contributing significantly to the overall educational, vocational, and emotional development of the deaf population, and that it is indeed a viable and necessary educational alternative.

Among the services and resources possible and available at some multi-role schools are:

- comprehensive education
- career exploration and training
- guidance services
- organized after-school activities that are an extension of the educational program
- curriculum development
- communications and language assessment and development

Roslyn Rosen, chairperson of the PL 94-142 Task Force.

- parent education
- early childhood education in satellite programs
- assessment, diagnosis and prescription
- advocacy and involvement
- research and evaluation
- experimentation and evaluation of innovative educational concepts, strategies and tools
- pre-service and in-service training
- demonstration programs to enhance public awareness and regular teacher education
- information dissemination
- learning resources center
- consultant services
- educational technology and materials
- community services
- continuing education
- cooperative programs with public schools, LEA's and LEA's
- state-wide or regional coordination of education of the deaf

REFERENCE:

Griffing, B. "Reshaping the Role of the State School for the Deaf in Public Education." *The Changing Role of School Programs for Deaf Children: Selected Papers.* Washington, DC: Conference of Executives of American Schools for the Deaf, Inc., 1977.

Kendall Demonstration Elementary School and PL 94-142

by Ruby Frye and Judy LeNard

☐ Like other programs for the hearing impaired throughout the nation, KDES is gearing up for compliance with PL 94-142. Initially, an analysis of KDES's existing program in light of the law and the proposed regulations was done to determine which components of the program were already in compliance and which would require modification or additions to meet the law.

A task force with representatives from various divisions within the school is currently at work with each member assuming responsibility for the area that dovetails with his/her regular school responsibilities. The main issues in each area were touched upon through a series of stimulus questions, and task force members had the responsibility to propose options as to how KDES should respond to those questions.

Since KDES is currently in that phase of the process, only status reports from six of the areas can be shared at this time. Timelines for the completion of plans in each area vary, but basically, KDES will begin implementation of the IEP in the Fall of 1977. As each section completes its work, that information will become available for dissemination. Anyone wishing information on the process for compliance (task force and stimulation questions) or the procedures and forms developed should contact the Office of Development and Evaluation at KDES.

Assessment and Record Keeping—Basic areas of desirable assessment data have been identified. A core group of age-appropriate tests and evaluation measures are being decided upon. Our plan is to determine minimum desirable information for each age range (0-3, 3-6, etc.) and to update student files where there are gaps. We hope to use our research facilities at KDES to do some validations on instruments already in use but which have no data on hearing impaired children or no existing measures. Two such efforts currently underway are School Behavior Check List and Self Image Inventory.

For the purpose of sharing test data with parents and others, a format showing the child's individual score in comparison to data from other KDES children in his/her age range and a national norm, if this data is available, will be used when appropriate. In addition, KDES is attempting to develop a profile form that will facilitate interpretation of test data by showing the child's individual strengths and weaknesses in the areas tested.

Initially, recordkeeping will be done manually, but later will be computerized.

Curriculum and Program—KDES will be using its curriculum which is a scope and sequence of skills as the basis for the process of developing the IEP's. Written in behavioral objectives format, the curriculum uses a tracking system that provides flexibility in choice of objectives to the teacher and parent. Based on objectives developed for hearing children, it will be revised this summer after one year of implementation at KDES.

Development of the IEP Form and procedures for the IEP Conference are in progress. The form will reflect the KDES philosophy and program as well as comply with the law.

Special Services—An analysis of the law's regulations regarding special services and the KDES in-house capacity to provide those services is being done in collaboration with the efforts on assessment and IEP format.

Mainstreaming—While information on mainstreaming alternatives and criteria for placement are being collected, opportunities for joint efforts between the local school districts and KDES for both mainstreaming and reverse mainstreaming possibilities are being discussed.

Parent Information—The parent of a KDES child is working with the Gallaudet PL 94-142 Task Force on a parent information package. KDES will use that package, plus some additional information specifically about the KDES program, as a basis for parent orientation. The training program for parents will start this summer and will provide the opportunity of complying with PL 94-142. Packets and training programs should be available by Fall, 1977.

Training—Four groups of persons needing training have been identified—Assessors, Administrators, Implementors, and Consumers. Training for each of these groups is currently being planned with emphasis on the last three. The training will include basic understanding of PL 94-142 and its implications for the specific group, KDES procedures and status with regard to the law, and the role of participants in developing and implementing the IEP.

Inservice training in areas of language instruction, total communication, career education, and alternate approaches to instruction are conducted throughout the year. The primary objective of this inservice training is to assist the teachers in individualizing each student's program.

PL 94-142 Outreach—KDES also assists with off-site PL 94-142 Outreach Programs and Training Workshops, with MSSD and Pre-College Programs.

In 1856 philanthropist Amos Kendall began a small school for deaf and blind children on a two-acre portion of his estate in Northeast Washington, DC. By 1864, that school had been authorized to grant liberal arts degrees under an Act of Congress signed by President Abraham Lincoln. Today, Gallaudet College serves a student body of 1200 undergraduate and 300 graduate students. The Kendall Demonstration Elementary School and the Model Secondary School for the Deaf are both located on Kendall Green and are part of the total multi-faceted educational institution which Gallaudet College has become. Gallaudet's undergraduate students come from both schools for the deaf and local public school systems in the 50 states across the United States, as well as from many other countries.

MSSD and PL 94-142

by Michael Deninger

☐ In preparing for the implementation of PL 94-142, the Division of Instruction Management Team of MSSD began late in the spring of 1976 to develop a system of educational planning and progress reporting. Included in this system was a statement of requirements for graduation from MSSD, a plan for individualizing educational objectives for students, progress reporting procedures that would be compatible with the system, and an educational planning document that would be developed by parents, teachers, and students. The status of this system was presented to the National Advisory Committee on the Handicapped in August, 1976, and their advice was solicited. Since that time, a statement of specific graduation requirements which reflects the requirements of PL 94-142 has been proposed and accepted by the Gallaudet College Board of Directors.

The educational planning document was refined and implemented on a pilot basis with all first year students in the fall of 1976. Education programs were developed and completed for all of these students with the direct involvement of parents in the process. Prior to the development of the plan, thorough case histories were developed for each student in conferences with the parents. This included necessary information such as family history, educational history, work experiences, and individual post-secondary goals.

Based on these experiences, an additional effort was undertaken related to the law in October, 1976. A committee was established to guide the implementation of the individualized education program and other plans related to PL 94-142 at MSSD. Initially, this group, composed of administrators and teachers, discussed the implications of the law and how it would affect MSSD students and programs. Members of the committee investigated the requirements of the law related to the function of special education placement committees, the development of individualized learning plans for students within courses, the individualized education program and procedures for evaluating student programs based on objective criteria. Following these investigations, specific details and timelines for implementing individualized education programs were developed. An individualized education program (IEP) set of materials was developed and is currently being used as the format for compiling individualized programs with students and parents.

In-Service Training

Early in January, three in-service workshops were provided for all members of the Division of Instruction, and the Division of Developmental Education. Three broad objectives were established for each workshop participant: 1) to view presentations on the major requirements, priorities, and intents of PL 94-142; 2) to review the process that MSSD will undertake in developing IEP's and have an opportunity to suggest improvements; and 3) to participate in a simulated conference where an IEP is actually developed.

During this workshop, committee members presented their findings and the proposed package for IEP development at MSSD. An overview of the law and its implications for programs for the deaf was given to participants. Simulated IEP conferences were role played by faculty members with the goal being the completion of an IEP. These workshops provided the committee with valuable suggestions for revision of some of the forms and procedures, thus enabling MSSD to solve some problems before conferences with parents began.

IEP Development

On January 28, parents met with school personnel at three sites for spring registration: MSSD, Philadelphia, and Williamsburg (Pittsburgh was planned but cancelled by weather conditions). At these meetings, the law was explained briefly to the parents and all were told what would be happening at MSSD relative to the law and about the development of individualized programs during the next months. Generally, the parents were very cooperative and interested in helping in whatever ways they could.

Teachers and counselors then began work on collecting the information that would be necessary to write the IEP's. Newly developed course histories were verified through each academic department and complete case history information was obtained if necessary. Academic advisors and school counselors wrote summary information of academic achievement, work study experiences, vocational interests, and other pertinent information. When the advisor had completed all necessary information, an appointment for the IEP conference was made with the student and parents.

The goal of MSSD was to have individualized education programs for all students who were not seniors by the end of the school year (approximately 105 students).

Outreach Efforts

During this time of planning for and developing IEP's, MSSD received many requests for information about this new law and its requirements. Given MSSD's responsibility for dissemination of information about educational programming for hearing impaired students, Pre-College Programs began to consider how to formally present such information to the field. MSSD already had two faculty members serving on the Gallaudet PL 94-142 Task Force.

The idea of providing workshops on the

Judy LeHard shows Dr. Geer, executive director of the Council for Exceptional Children, and his staff around KDES.

law was discussed and a telephone survey was conducted of educational programs that might be willing to host regional workshops for school administrators. Subsequently, because of expressed interest, workshops were arranged and conducted at the New York School for the Deaf, White Plains (May 6, 7), the Marie H. Katzenbach School for the Deaf, Trenton, NJ (May 13, 14), and the Florida School for the Deaf and Blind, St. Augustine (May 19, 20). Approximately 130 administrators of programs for the deaf participated in these workshops which were well received according to participant evaluations. In addition, a workshop was conducted at St. Mary's School for the Deaf, Buffalo, NY (May 25, 26).

Summary

From its initial investigations into this law, through planning and implementation, to outreach efforts of Gallaudet Pre-College Programs, MSSD has attempted to provide assistance to students, parents, and professionals in the field in meeting the mandates of PL 94-142. The spirit of the law is one which promises equal educational opportunities which need astute attention from all individuals responsible for the care and maturation of these children.

Gallaudet and PL 94-142

by Roslyn Rosen

The global goal for Gallaudet in relation to PL 94-142 is to assume a highly visible leadership role which includes responsibility for:

1. supporting and safeguarding the rights of all handicapped children to the best possible extent in a full, appropriate educational environment under the law;
2. monitoring and evaluating the impact of PL 94-142 on the education of hearing impaired students;
3. continuing actively to enhance awareness in the public and educational agencies of deafness and the needs of deaf children;
4. developing, modifying, implementing and monitoring in-house activities, procedures and products to assist in the implementation of the law; and
5. serving as a viable and up-to-date resource center which provides information, direct services, and materials to consumer, interest, parent, and service groups.

As the full-time coordinator of Gallaudet's PL 94-142 Effort, I head a special 13-member Task Force specifically appointed to represent various units and programs at Gallaudet. The Task Force membership includes the following individuals: Nancy Cowan, MSSD, communications specialist; Michael Deninger, MSSD, associate principal; Ruby Frye, KDES, elementary school supervisor; Jack Gannon, director of Alumni and Public Relations; Dr. Mervin Garretson, assistant to the dean, Pre-College Programs; Judy LeNard, KDES, director of Development and Evaluation; Mary Ann Locke, executive Director, International Association of Parents of the Deaf; Cathy Moses, assistant professor, Sociology; Jean Mulrooney, instructor, Psychology; Ramon Rodriguez, instructor, Education; Dr. Edmond Skinski, chairperson, Department of Educational Administration; Dr. Raymond Trybus, director, Office of Demographic Studies; Ann Champ-Wilson, parent and community representative, executive director of DeafPride. Consultants to the Task Force include Al Pimentel, Sy DuBow, and Robert Mobley.

Dr. Abeson of CEC watches an MSSD student doing a lesson on the computer.

The Task Force has identified and prioritized basic needs as a result of PL 94-142 and is currently developing, implementing, and/or evaluating processes and products required for the realization of the major PL 94-142 objectives of Gallaudet. The main areas include but are not limited to the following areas:

1. Assessment of Individual Children

2. Individualized Education Program products and processes

3. Parent Education and Advocacy

4. Public Awareness and Publications relative to PL 94-142 and needs of deaf children

5. Resource Capacity (workshops, consultants, program assessment, lectures)

6. Mainstreaming and Interpreters Guidelines.

IEP Workshops and PL 94-142 lectures have been conducted for various schools and organizations nation-wide as well as on campus. Since this is a time for coordination and cooperation, not competition, Gallaudet has also made contacts with external organizations such as the Council for Exceptional Children, the National Association of the Deaf, SEA's and LEA's near Washington, DC, and the Conference of Executives of American Schools for the Deaf, in order to build two-way bridges and mutual projects or goals. For instance, Gallaudet hosted a one-day workshop on campus for a 15-member delegation from the Council for Exceptional Children, during which PL 94-142 in relation to needs of deaf children was explored and discussed. Gallaudet will sponsor two workshops on PL 94-142 on campus this summer for parents and professionals working with the deaf. Additionally, Gallaudet responds to daily mail and telephone calls relative to PL 94-142 and deaf children.

I may be contacted at Gallaudet College, 7th Street and Florida Avenue, NE, Washington, DC 20002, or by telephone at (202) 447-0780 (voice or TTY).

In closing, this story of an ambitious but inexperienced golfer may be appropriate. The golfer, with great flair, put a golf ball on the tee, sized it up, and took a mighty, well-measured stroke. Off the ball flew—not towards the little hole though, but into the rough. Subsequent strokes took the ball into sand traps, water traps, the woods, and finally to the top of an ant hill. Never did our determined golfer falter. With his jaw set firmly and every muscle under control, he approached the ball with his battered club and sent hundreds of ants flying into the air and into the great beyond. But the ball just sat there on top of the ant hill. With great single-mindedness he swung again. A cloud of ants in the sky, but no ball. Wiping the sweat off his brow, adjusting his stance, the golfer again threatened the ball. Just then, two ants scampered by, looked with dismay at the devastation on the green, and then at each other. "Goodness, where can we go to be safe?!" exclaimed one ant. The other retorted, "Well, from the look of things, guess the safest place is to get on that ball!"

We, too, must get on the ball to ensure that deaf children are not maimed educationally or emotionally by inappropriate placement, personnel, or programs, and to safeguard the rights of handicapped children to the best extent possible in a full, appropriate public education, commensurate with their individual needs.

Resources

The following organizations have an interest in seeing that PL 94-142 is implemented. You may wish to contact them to learn what they are doing in this regard.

1. National Association of the Deaf
   814 Thayer Avenue
   Silver Spring, Md. 10910
   Voice: (301) 587-1788
   TTY: (301) 587-1791
2. Closer Look
   Box 1492
   Washington, DC 20013
   Voice: (202) 833-4163
3. [illegible], Inc.
   2010 Rhode Island Avenue, NE
   Washington, DC 20018
   Voice: (202) 636-2130
   TTY: (202) 636-2131
4. Council for Exceptional Children
   1920 Association Drive
   Reston, Virginia 22091
   Voice: (703) 620-3660
5. National Center for Law and the Handicapped, Inc.
   1236 North Eddy Street
   South Bend, Indiana 46617
   Voice: (219) 288-4751
6. International Association of Parents of the Deaf
   814 Thayer Avenue
   Silver Spring, Md. 20910
   Voice: (310) 585-5400
7. International Parents Organization
   Alexander Graham Bell Association
   3417 Volta Place
   Washington, DC 20007
   Voice and TTY: (202) 337-5220

At Gallaudet College a number of divisions can provide help or provide information related to specific areas of PL 94-142:

Kendall Demonstration Elementary School
Phone or TTY: (202) 447-0821

Model Secondary School for the Deaf
Phone or TTY: (202) 447-0411

National Center for Law and the Deaf
Phone or TTY: (202) 447-0445

Task Force on PL 94-142
Phone or TTY: (202) 447-0780

Center for Continuing Education and/or Public Service Programs (can assist in planning workshops)
Phone or TTY: (202) 447-0461

Gallaudet College Alumni Association (interested in advocacy)
Phone: (202) 447-0741
TTY: (202) 447-0480

The Gallaudet Alumni Newsletter is published 10 times a year by the Gallaudet College Alumni Association, Alumni Office, Gallaudet College, Washington, DC 20002. This publication is mailed free of charge to Gallaudet alumni and interested persons. To be placed on the mailing list, send your name and address to Mrs. Pauline Peikoff at the above address.

alumni

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JUN 10 1977

Received
6/20/77
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The Honorable Jennings Randolph
Chairman, Handicapped Subcommittee of
the Human Resources Committee
5121 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

It is our understanding that your Committee is having oversight hearings this month relative to Public Law 94-142. We will not present oral testimony but wish to have this letter included as a part of these hearings.

With the passage of Public Law 94-142 in November of 1975, the Ohio Department of Education has given continuous and indepth attention to the implementation of these new federal mandates. In the spring of 1976, the Ohio General Assembly enacted new state legislation completely revising Ohio's provisions for the education of the handicapped. This revision of Ohio law has provided the Ohio Department of Education with full authority to implement the requirements of Public Law 94-142.

The Ohio Department of Education, the Ohio State Board of Education, and the Ohio General Assembly agree with the principles contained in the federal legislation, endorse their implementation wholeheartedly, and have worked diligently for eighteen months to achieve implementation within the timelines as established in the federal legislation. In spite of these magnificent efforts and major increases in state funding, several problems have developed to the point where they seriously impede the development and delivery of appropriate and full educational opportunity for each handicapped child three through twenty-one.

The mandate for full service scheduled for September 1, 1978, accelerated Ohio's 10-year plan to achieve full service for all handicapped children by 1980. At a time when the combination of inflation and the energy crisis has created a serious economic crisis, Ohio is faced with a significant escalation in its financial commitment to the expansion of educational programs for the handicapped. Current data based on Ohio's statewide identification system and a legislative mandate for a report on unserved children indicates that Ohio will need an additional 2400 teachers to achieve the full service goal for children six through eighteen by September 1, 1978.

In the face of this crisis in resources, Public Law 94-142 provides full funding in 1982 while mandating full service in 1978. The discrepancy is a critical problem in implementation. In addition, it is absolutely essential that the funds provided under the flow-thru provisions of Public Law 94-142 be available to the states to be used to employ special education teachers and other support personnel to provide full and appropriate educational opportunity to all handicapped children in accordance with the priorities of the law.

During January and February, the Department of Education, with the approval and at the request of the State Board of Education, initiated an extensive study of the proposed rules and regulations for the implementation of Public Law 94-142 as published in the December 30, 1976, Federal Register. While we found that the Bureau of Education for the Handicapped had developed regulations that in many cases implemented their commitment to develop minimum regulations until a greater experience with the law had been acquired, there were a number of major instances where the rules and regulations developed requirements, mandates and demands that exceed anything in the law or in the congressional history of the law. These examples have been referred to the Bureau of Education for the Handicapped with recommendations for correction. If these instances of excessive regulation were deleted and the regulations were more articulate in dealing with some of the major questions for implementation, such as, the appropriate use of flow-thru money at the local level it would not be necessary to postpone flow of money to the local school districts until sometime after January 1, 1978.

In summary, the Ohio Department of Education wishes to submit a demonstrated commitment and enthusiastic endorsement to the principles of the law. However, the problems associated with implementation are even more severe than anticipated. The acceleration of Ohio's 10-year plan by two years makes the date certain for full service by September 1, 1978, a major hardship. The delay of funding the federal formula until 1982 creates an incongruity that is difficult to deal with. Finally, the proposed regulations develop and articulate mandates well beyond the provisions of the law. Present demands may place full implementation beyond the reach of most school districts in Ohio in such a short period of time.

It is hoped that the United States Congress can give serious attention to providing some relief to the problems as outlined above. It is Ohio's position that such relief would, in the long run, result in full compliance with the law and quality education for all handicapped children within the state.

Sincerely,

Franklin B. Walter

Franklin B. Walter
Superintendent of Public Instruction

FBW:js

State of West Virginia
Department of Education
Charleston
25305

DANIEL B. TAYLOR
STATE SUPERINTENDENT
OF SCHOOLS

June 17, 1977

The Honorable Jennings Randolph
Member, United States Senate
Room 5121
New Senate Building
Washington, D. C. 20510

Dear Senator Randolph:

Let me begin by expressing my appreciation for the opportunity to voice my concerns with P.L. 94-142, Education for All the Handicapped Children Act, and request that this letter be made part of the record of the hearings on this Act. Before I delve into some of the issues this Act will impose upon State and local boards of education, let me say that no one could in all fairness be negatively concerned about the general purpose and intent of P.L. 94-142; that is, to provide a free appropriate education for the handicapped. To do so would be like questioning motherhood. We as educators recognize our charge and responsibility for the education of our children including the handicapped. What is lacking to implement this charge are resources--personnel, finances, buildings, and public support.

In West Virginia the expansion of programs and services for exceptional children has been dramatic, particularly over the last five years. In school year 1972-73 there were just over 14,000 students served through special education programs. This past year, 1976-77, the number of exceptional students being served in West Virginia was over 32,000. This increase has primarily been the result of a major financial commitment by the State and local boards of education. Last year there was an estimated 32 million dollars expended by the State, excluding local funds, to serve exceptional students in West Virginia schools. An additional six million dollars will probably be made available this year to expand and improve programs and services for exceptional students. The sheer bulk of dollars that have been channeled into special education is of itself testimony to West Virginia's commitment to serving exceptional students.

Given the dollars presently in special education and the projected continuation of additional funds, it still appears that West Virginia will have difficulty in complying with the requirements of P.L. 94-142 for full service by 1978 for children ages 5-18.

Some aspects of P.L. 94-142 that cause concern to us in West Virginia are as follows:

1. Funds authorized under P.L. 94-142 are to first be used for providing services to priority one, unserved children, yet the allocations to counties will be determined by the number of children already receiving services. This procedure for distributing funds will make more funds available to those counties already serving large numbers of exceptional students, provided they can locate additional priority one students. At the same time, those counties having the greatest need to initiate and expand programs are limited by their current enrollments as to the dollars they are eligible to receive.

2. Section 611(c) (4) (A) of the law describes an eligibility criterion for receiving funding based upon student count data requiring counties to generate a minimum of $7,500 annually. Assuming five percent of the national per pupil expenditure for 1978 being approximately $70.00 per student, a county must have 108 students enrolled in special education. For many West Virginia counties attaining full service for approximately 12 percent of the total school population would not yield the required number of students to be eligible for an allocation. The premise that the $7,500 eligibility criterion will promote multi-district programs, thus creating quality special education services, is an acceptable concept. However, the factors which will keep many West Virginia counties from being eligible for funding are the same factors which indirectly prohibit multi-district merges. The sparse population, distances between population clusters and other topographical and geographical conditions are insurmountable obstacles with or without the proposed 40 percent of the national per pupil expenditure in 1982.

3. P.L. 94-142 stipulates that programming for handicapped individuals include needed related services. Another section disregards the added cost of the related services by prohibiting the counties from counting services or educational multiple service configurations (unduplicated student count.) In order to provide incentives for the inclusion of all related services in a student's Individualized Education Program (IEP), the student count must provide the counties with the opportunity to receive appropriations based upon service costs. Classroom instruction, speech pathology services, audiology services, physical therapy and other services may cost three times as much as classroom instruction alone. The appropriation formula should account for these additional costs.

4. Section 611(B) sets forth the increments in funds that will be available to assist states in implementing the Act. The starting point is five percent of the average per pupil expenditure in the same year that states are required to provide full service. Larger sums of money are authorized to come later. The funds are needed in large amounts as soon as possible to offset the high costs of initiating programs.

5. Section 613(a) (3) requires the establishment of a comprehensive program of personnel development for teachers and support personnel. Funds have not been proposed to finance a massive effort of this nature. If the comprehensive personnel development is to become a reality immediately, funds must be appropriated by the Congress for this purpose. To have the mandates of this Act fully in place in 1982 is out of the question when we consider that approximately one-half of the 250,000 special education teachers in this country will have to be retrained and an additional 250,000 teachers will be needed to serve the estimated eight million children in need of such services.

6. Section 615(b) (1) (B) reiterates the requirement for services of surrogate parents set forth in P.L. 93-380. Many questions have been raised in relation to surrogate parents. This requirement appears to be in conflict with existing State laws, court orders and regulations designed to protect the rights of those individuals who are wards of the State. Are surrogate parents to serve on a voluntary basis? If not, who pays them? Can surrogate parents be sued for decisions they make on behalf of an individual? The whole issue of surrogate parents has raised questions to the point that a State Attorney General's opinion has been sought to help clarify the matter.

The above mentioned points of concern for P.L. 94-142 represent only a portion of the problem areas that could be raised about this law. In short, it appears that too much is being required in too short a time, with too little financial support.

I am sure these same concerns have been voiced by other states and groups. There are a few situations that may be of particular interest to you because they may be, in some ways, unique to West Virginia. Our plans for better schools and continuing education represent two of these situations.

The Better School Buildings Amendment was passed in 1972 and provided $200 million dollars for the construction and renovation of public schools in the State. Since the passage and funding of this legislation, 47 counties have submitted to, and had approved by the State Board of Education, their plans for developing comprehensive educational facilities. Facilities plans submitted by the counties were required to address the needs of exceptional children and did, as those needs and requirements were perceived, prior to the passage of P.L. 94-142 and the issuance of regulations for Section 504 of the Vocational Rehabilitation Act. Where building programs have been completed and the new or renovated facilities do not adequately now meet the needs of exceptional children, it will be extremely difficult to generate additional dollars that will be required to meet current needs. This situation constitutes a critical problem in some of our counties. The magnitude of the problem will become clearer as the number of students being served increases.

The issue of professional development has received much attention by the Department in the last year. A task force has worked diligently on a plan that addresses the issue of comprehensive personnel development on a Statewide basis. On May 27, 1977, the task force submitted its final report to me. The plan has been carefully thought out and would be the appropriate vehicle to meet the requirements of Section 615(b) (1) (B) of the Act. However, before the professional development program is implemented, legislative appropriations will be needed and time will be required to set the mechanism in operation to provide the training and retraining of teachers and support personnel. Limited operation is expected in the fall of 1978 and full operation in the fall of 1979. These time lines assume adequate funding and staffing in the next regular session of the State Legislature. Therefore, the delivery of critical professional development cannot be realized until 1980, two years after we are required by P.L. 94-142 to be at full service and functioning in a least restrictive mode for exceptional children.

We have some very real problems facing us as we, in West Virginia, attempt to meet the spirit and intent of P.L. 94-142. As has been previously stated, we are not at variance with the intent of the law, rather the time constraints and lack of adequate funding to implement that intent. Rest assured that West Virginia will achieve the full-service goal. Our investment in special education will continue to grow. Last year the State to federal funds were at a ratio of 32 - 1, or three percent of the costs of educating exceptional children in West Virginia. We hope the federal government will move rapidly to shoulder the cost of providing those free and appropriate programs so adamantly stated in P.L. 94-142.

P.L. 94-142 appears to be an invasion of the constitutional and statutory rights of State and local government for the control and direction of education. I call your attention to Section 432 of the General Education Provisions Act which states, "No providion of the Act of September 30, 1950, P.L. 874, Eighty-First Congress: The National Defense Education Act of 1958; the Act of September 23, 1950, P.L. 815, Eighty-First Congress: the Higher Education Facilities Act of 1963; the Elementary and Secondary Education Act of 1965: the Higher Education Act of 1965; the International Education Act of 1966; the Emergency School Aid Act: or the Vocational Education Act of 1963 shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance."

I close with the thought that handicapped people living in West Virginia ought to have a right, as people of the United States, to receive their fair share of federal funds provided by the U. S. Treasury (see attached legal citation) for helping handicapped citizens, and that this right ought not to depend upon whether their State will also provide financial assistance to them. For the U. S. Government to place a State Government in the position of having to spend money out of its own treasury on a federally assisted program--particularly the lion's share of the money--in order for its people to enjoy a benefit of U. S. citizenship is questionable.

Very truly yours,

Daniel B. Taylor

Daniel B. Taylor
State Superintendent of Schools

DBT:kb

Legal Citation

Equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and made applicable to the Government of the United States by the substantive due process aspect of the due process clause of the Fifth Amendment to the Constitution of the United States. See Johnson v. Robison, 415U.S.361 (1974).

THOMAS A. LUKEN
2D DISTRICT, OHIO

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Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEES:
INTERSTATE AND FOREIGN COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE
SMALL BUSINESS

September 7, 1977

Received
9/12/77
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The Honorable Jennings Randolph
Chairman, Handicapped Subcommittee
of the Human Resources Committee
5121 Dirksen Senate Office
Building
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed please find my remarks to be included in the hearing record on Public Law 94-142.

Thank you very much.

Sincerely yours,

Tom Luken

THOMAS A. LUKEN
Member of Congress

TAL:ng
Enclosure

I will not present oral testimony, but I wish to have my views presented as part of the hearing record so that I might express my grave concern over the problems regarding the implementation of the Education for All Handicapped Children Act.

I strongly favor the necessary and important impact of this legislation and I support rapid yet responsible enactment of Public Law 94-142. Every person has the constitutional right to a public education and to access to such programs.

The problems surrounding the implementation of Public Law 94-142 by the present September 1, 1978 deadline have continued to gain national attention as states attempt to meet the target date.

Ohio has been among those states in the forefront as an active and innovative leader in the field of education for the handicapped. The comprehensive state plan for special education, adopted by the Ohio State Board of Education in 1973, serves handicapped persons through special classes, speech, language and hearing instruction, school psychological counseling and special individual services which include home instruction, supplementary tutoring, transportation, boarding homes and reader and guide assistance for the visually impaired.

Ohio can further document support figures which illustrate both the earnestness and competence of the Ohio State Department of Education, thereby establishing the credibility of their plea for some necessary changes in Public Law 94-142 as presently mandated.

Ohio has developed a ten year plan for full service for the handicapped population by 1980. Public Law 94-142 pushes this date up to 1978 yet the federal funding formula does not reach its maximum support level until 1982. It is unrealistic to expect states to reach full service when sufficient funding is not provided. Fiscal responsibility must not fall entirely on state and local school districts who, as is the case in Ohio, have already increased substantially the budget for the handicapped services and support personnel.

The federal government has taken the appropriate action in the passage of Public Law 94-192, but the law as it stands does not take into account available resources and the present demands on these resources on the state and local levels. At present school budgets are stretched to their maximum ability and to expect them to increase funding by millions of dollars is not only impractical but impossible.

State departments of education have expressed their extreme concern over the present funding formula and it would be irresponsible to ignore these pleas. The federal government must take a serious look at increasing the formula schedule to a rate which is proportionate to the full service requirement as the law mandates.

The current budget projection in Ohio shows that 151 schools may have to close their doors if they do not receive additional funding yet they have worked relentlessly to achieve implementation within the timelines of this federal legislation.

On behalf of Ohio and other states experiencing similar difficulties I urge the Congress to review carefully the concerns brought before the Subcommittee on the Handicapped during these hearings. I further urge that the Congress give full consideration to appropriating supplemental funds to be allocated as need demonstrates.

The American
Occupational Therapy Association, Inc.

July 28, 1977

JUL [illegible] 1977

Received
Date 7/27/77
[illegible] 82
[illegible] Handicapped

The Honorable Jennings Randolph
Chairman, Subcommittee on the Handicapped
Committee on Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The American Occupational Therapy Association commends you for your continued leadership on behalf of the nation's handicapped citizens.

The Association had requested to testify before your Subcommittee during its consideration of the Education for All Handicapped Children Act, the Rehabilitation Act, and the proposed establishment of a National Center for the Handicapped. The Subcommittee's witness list could not accommodate all of the organizations wishing to testify about these important matters, and we were, unfortunately, not able to present our views to you in person.

I request, therefore, that our statement be made a part of the Subcommittee's official hearing record, and I offer whatever assistance we can provide you in the future.

Sincerely,

James J. Garibaldi
Executive Director

JJG:RLM:jlr

Attachment

The American
Occupational Therapy Association, Inc.

STATEMENT OF THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION
ON
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (PL 94-142)
THE REHABILITATION ACT AMENDMENTS OF 1977 (S 1712)
AND
THE NATIONAL CENTER FOR THE HANDICAPPED ACT (S 1596)*

Mr. Chairman and Members of the Subcommittee:

The American Occupational Therapy Association is pleased to submit this statement as the Subcommittee continues its examination of programs for handicapped individuals.

For 60 years this Association has represented independent health professionals who specialize in alleviating the suffering and increasing the independence and productivity of the aged, the physically or mentally disabled, and the economically or culturally disadvantaged.

Occupational therapy practitioners are trained in curricula involving developmental psychology, anatomy, neurophysiology, and the social sciences. This training is followed by field work experience in areas such as psychiatry, rehabilitation, developmental disabilities, and gerontology.

Occupational therapists are among the few non-physician mental health professionals who are trained in the medical and biological sciences. They provide services in general and psychiatric hospitals, nursing homes and tuberculosis sanitoria, community mental health and mental retardation centers, rehabilitation agencies and home health settings, and public and private school systems.

The Association and the 23,000 members which it represents therefore have a great interest in the Subcommittee's activities. The three programs currently under consideration by the Subcommittee are of particular interest and importance to occupational therapists throughout the nation. Our comments on these programs are summarized below.

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*A statement submitted to the Subcommittee on the Handicapped of the Committee on Human Resources, United States Senate, Washington, D.C. 20510, July, 1977.

I. PL 94-142: EDUCATION FOR ALL HANDICAPPED CHILDREN

A. Occupational Therapists in the School System

Occupational therapy practitioners are trained in human development, anatomy, neurophysiology, and the social sciences. In addition to our work in rehabilitation and developmental disabilities, we are among the few non-physician mental health professionals who are trained in the medical and biological sciences.

Occupational therapists have long been involved in the nation's school systems to provide therapy to children with orthopedic handicaps. This therapy is designed to improve the child's functioning and independence. Our activities have been expanded to include services to children with multiple handicaps, mental deficits, emotional disturbances, or specific learning disabilities. In addition to these direct services, occupational therapists provide screening and evaluation procedures, as well as consultation to parents, teachers, and school administrators.

Occupational therapists are currently involved in school systems in almost every state in the Union. In addition, over half of the American Occupational Therapy Association's affiliated state associations sponsor education programs and special interest groups for therapists serving local school systems. Today's occupational therapists utilize their training in the psychological and biological sciences to bring about positive changes in the handicapped child's growth and development, social and academic potential, and provide a foundation from which special educators may build. Thus, the occupational therapist's role is supportive of and complementary to other health professionals and educators who provide services to handicapped children. In carrying out this role, the occupational therapist performs several important functions. These include:

1. Evaluating performance skills and components;
2. Planning and designing programs based on specific performance need;
3. Implementing occupational therapy programs with the child, parent, teacher, and other individuals important to the child's progress or performance.

Unique Services of Occupational Therapists. We would like to give an example of just one of the many areas in which occupational therapists have unique training and skills which enable them to assist handicapped children to benefit from special education programs. This example is the area of neurological disorders.

Occupational therapists are trained in human neurological development. This gives them special insight and experience in working with pre-school or elementary school children who have minimal brain dysfunctions which can seriously impair learning skills and social development. The term "minimal brain dysfunction" includes perceptual motor handicaps, learning disabilities, neurological learning disorders, cerebral dysfunction, dyslexia, hyperkinetic syndrome, and conceptual handicaps. All of these are handicaps which the occupational therapist is trained to recognize, evaluate, and treat.

Through the use of developmental testing and therapy, the occupational therapist can assist children with learning disabilities to take part in the regular or special educational program. The therapist helps these children to develop eye-hand coordination; to learn letters, numbers, and directions; to orient themselves in their spatial surroundings; and to develop basic hand functions. Occupational therapists also help these children to cope with perceptual problems which are not concerned with visual acuity, but with neurological dysfunctioning.

By developing greater understanding and control of their limbs and their perceptions, children who have been treated by occupational therapists may participate in and derive greater benefit from their educational program. A child with a specific learning disability, such as dyslexia for example, may be trained to overcome or compensate for this disability; such training may facilitate learning how to read or write.

The occupational therapist may also work in concert with other professionals, such as physical therapists, to help in the education of children with orthopedic handicaps. The physical and occupational therapists may, for example, develop a special type of seating and communications arrangement to allow a seriously handicapped child to remain in the regular classroom and progress with the rest of his or her classmates, under the direction of the regular or special education teacher. The occupational therapist's involvement with these children is, therefore, complementary to the role of the special educator and other concerned professionals.

Because of our profession's commitment to quality services and educational opportunities for handicapped children, we would like to share with you several problem areas under PL 94-142 that impact heavily upon providers of related services. These providers include occupational therapists, physical therapists, speech pathologists, and audiologists, among others.

B. Administrative Problems For Providers of Related Services

PL 94-142 demonstrates the Congressional recognition that many handicapped children require additional services if they are to benefit from a special education program. Providers of many of these related services, such as occupational therapists and physical therapists, are trained in the health sciences rather than in the educational sciences. The law's inclusion of health-related services in the educational setting appears to have created--or at least unearthed--administrative problems in many states which threaten to impede successful implementation of PL 94-142. While not all of the problems discussed below occur in all of the states, they do represent typical problems reported to us by occupational therapists and other health professionals throughout the country.

1. Administrative Classification: In some states, health providers of related services are administratively responsible to the state or county health department even though their activities are conducted within the department of education. This results in conflicting requirements or bureaucratic structures which make it virtually impossible to obtain professional personnel to carry out the law's intent. For example, in Montgomery County, Maryland, there are over 14,000 students estimated to have handicapping conditions. There is only one occupational therapist in the school system. Although her services would certainly not be required by all of these students, we estimate that there are approximately 1,300 students who could benefit from occupational therapy. At present, only 30 of these handicapped students receive occupational therapy services.

More occupational therapists are needed to meet this school system's needs. However, the Montgomery County Health Department has no job positions for more school-based therapists. Thus, the job classification structure in the county health department prevents the county education system from increasing the number of therapists available to carry out the public law.

Since the law is still in very early stages of implementation, we do not know if this type of situation will prevail. We mention it here to alert the subcommittee to the type of administrative problems which can develop but which are not readily apparent to state officials.

2. Certification Requirements: Other states, such as Florida, require certification by the state board of education before providers of related services can provide services in the public special education program. This state education certification must be renewed every two years, contingent upon successful completion of a required number of special education credits. We believe that some form of continuing education or recertification requirement is necessary and appropriate. We do not believe, however, that it is appropriate to require providers of health related services to take education courses in order to continue providing health services to handicapped children. This type of rigid administrative requirement is counter-productive and is a disservice to health providers. Far more important, it is a disservice to the handicapped children they serve. These children should receive therapy from professionals who are continually improving their therapeutic skills--not their educational skills.

The state plan provisions of PL 94-142 require development of a comprehensive system of personnel development and inservice training for "special educational instructional and support personnel." We believe that if the system of personnel development is to be comprehensive, and if it is intended to benefit handicapped children, then it must not exclude providers of direct, related services. The Association has, therefore, recommended that the DHEW modify its proposed regulations for implementing this provision, to specify that the training and development include providers of related services.

The American Occupational Therapy Association is assisting the Department of Health Education and Welfare in developing a continuing competency program for all occupational therapists. Until similar programs are developed and operational, competency of providers of all health-related services should be determined by state licensure or professional certification by appropriate national certifying bodies. We are hopeful that the final regulations implementing PL 94-142 will contain this provision and will require states to recognize such certification as sufficient for participation in the public school system under this law

3. Salary Equivalency Formulas: Another reported practice within state school systems is the use of a full-time equivalency formula to determine the number of children health providers must treat daily in order to justify their salary levels. While the number of students served per day may be an appropriate measure for teachers, we believe it is a totally inappropriate measure for health-related practitioners.

The AOTA strongly opposes the use of this type of equivalency formula. It forces therapists to see more children in a given time period than they can treat effectively. One of the priorities of PL 94-142 is the provision of special education and related services to children who are presently underserved. These underserved children are usually severely and multiply handicapped. In order to prepare such children for special education, an occupational therapist may need to provide a program of intensive, individualized therapy. Strict application of an equivalency formula could seriously interfere with the provision of an intensive therapeutic program, and could actually discourage the provision of quality health services.

C. Need for Sufficient Number of Personnel

Other witnesses appearing before this Subcommittee have voiced their fears that school systems were purposely delaying implementation of PL 94-142 by refusing to hire appropriate numbers of personnel. We do not have sufficient information to determine whether such allegations are true, or whether delayed implementation is merely the result of bureaucratic barriers or the legitimate need to plan for the most efficient use of limited financial resources. Whatever the explanation, our members have reported to us that many states do not have sufficient numbers of qualified providers of related services to carry out the promise and the purpose of the Education for All Handicapped Children Act.

In some instances, where only one or two therapists are available for school systems, there has been talk of assigning large numbers of assistants to carry out the therapy program. Such a course is unwise. A single therapist, for example, cannot properly supervise dozens of therapy assistants throughout the school system. This is bad practice, and should not be condoned in the law or its regulations. In other instances, there is even discussion of training educators to provide health-related services. As we have stated above, handicapped children should be educated by educators and should receive health services from health practitioners. Any attempt to reverse roles is irresponsible and potentially very dangerous.

In addition, some states have adopted an "either/or" attitude toward related services. They read the law as requiring a physical therapist or an occupational therapist; an occupational therapist or a recreational therapist, etc. Providers of each of the designated related services have their own unique training and function, and provide special services which different children need. Not each child needs every type of related service, and not every provider of related services can meet each child's needs. Many children require several types of different services by qualified providers. We believe that future regulations must emphasize the provision of the proper service for the proper child, by the properly qualified provider.

We recognize the very real financial dilemma faced by states in trying to implement this law. We must insist, however, that states not be permitted to ignore the spirit of the law while attempting to comply with its letter.

II. THE REHABILITATION ACT

A. Extension of Authorizations (S 1712)

We believe that the Rehabilitation Act is one of the most important Federal programs benefitting handicapped citizens. We therefore endorse Chairman Randolph's bill (S 1712) to extend the Act's authorizations for five years. The Association believes that a five-year extension is necessary to provide a sufficient fiscal framework which can enable state rehabilitation agencies to plan more realistically and effectively.

In addition to extending legislative authorizations, we believe that S 1712 should be amended to include substantive changes in the Rehabilitation Act. Our recommendations for these changes are summarized below.

B. Independent Living Rehabilitation Programs

Current provisions of the Rehabilitation Act do not adequately meet the needs of many severely handicapped individuals. This underserved group includes individuals who need preparation in basic independent living skills before they can apply for vocational placement. It also includes individuals for whom employment is not feasible and who are not otherwise eligible for rehabilitation services. These individuals could benefit enormously from a program of independent living rehabilitation.

Occupational therapists are actively involved in this area by facilitating development of independent living skills. Participation in activities of daily living and prevocational training are necessary prerequisites for successful adaptation to the environment and development of effective coping responses. Based upon our experiences with these successful programs, the American Occupational Therapy Association recommends that the Rehabilitation Act include specific authorizations for demonstration programs in Independent Living Rehabilitation.

C. Vocational Training

In previous testimony submitted to this Subcommittee,[1] this Association has stressed the need for greater coordination of Federal programs for the handicapped, especially those affecting school-aged children who may fall through the cracks between the Rehabilitation Act and PL 94-142.

There is a similar group of underserved adults, individuals who are now beyond the coverage of PL 94-142 and who are too severely handicapped to compete in the regular job market. We believe that the Rehabilitation Act should place greater emphasis on the vocational possibilities of these severely disabled citizens.

The current trend towards deinstitutionalization of the handicapped is long overdue. Some individuals, however, must remain institutionalized or at least remain in a highly sheltered setting. According to the "Executive Summary--Role of Sheltered Workshops in the Rehabilitation of the Severely Handicapped,"[2] sheltered workshops are having difficulty in placing this type of client in the competitive labor market. The workshop study indicates that there is a need to improve client earnings and to provide workshops with incentive to improve their business practices. There is a similar need to study alternative methods for preparing the seriously handicapped individual for the competitive labor market.

The Association therefore recommends increased emphasis on vocational training for the seriously handicapped, as well as further study of alternative approaches to vocational placement.

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[1] Statement submitted to the Honorable Jennings Randolph, Chairman, on March 4, 1977.

[2] Greenleigh Associates, Inc. "The Role of the Sheltered Workshops in the Rehabilitation of the Severely Handicapped." Volume I--Executive Summary, July 1975.

III. NATIONAL CENTER FOR THE HANDICAPPED (S 1596)

A. Need for Research and Training

The Association has reviewed with great interest the provisions of Chairman Randolph's proposal to establish a National Center for the Handicapped (S 1596).

We believe that the types of programs included in this legislation would help fill the needs which are not met by existing legislation. We therefore strongly support the type and scope of programs which would be authorized in this legislation. The Association is particularly supportive of the legislation's emphasis on research programs and advanced training of rehabilitation personnel. This type of research and training is essential, we believe, in providing the highest quality of rehabilitation services and in maximizing the handicapped individual's successful development and vocational placement.

B. Need for Program Coordination

The combined result of the Rehabilitation Act, the Education for All Handicapped Children Act, and the programs outlined in S 1596 would be a rational, unified system for meeting the needs of all handicapped individuals.

There is one major factor, however, which we believe commands careful deliberation before a new administrative structure is set up; this factor is program fragmentation. In earlier statements[1] submitted to this Subcommittee, the American Occupational Therapy Association has expressed its concern about the fragmentation of Federal programs and has recommended that the Congress mandate greater communication and coordination among the many Federal programs affecting the handicapped. Using as an example the Federal programs for the developmentally disabled, we emphasized that,

> "It is extremely frustrating for the developmentally disabled and for the therapists who are trying to manage their treatment programs to continually encounter red tape and other bureaucratic barriers. We recognize that the enactment of special legislative authorities is designed to emphasize and address the nation's health and treatment needs. Unfortunately, it often obscures or complicates the

very programs which are attempting to meet those needs. An individual with physical and developmental disabilities may have to go through dozens of different state, Federal or local programs in order to obtain food, clothing, shelter, treatment, or habilitation. In the case of disabled individuals who do not have parents, guardians, or advocates to assist them in negotiating this maze, the program's benefits may be lost.

"We would like to emphasize that we are not advocating program consolidation. We believe that it is appropriate to target programs to meet the nation's needs. However, we believe that the series of separate public laws has, in practice, often resulted in rigid structures which limit program flexibility.

"Public Law 93-354 provides an example of the type of coordination we are encouraging. That law extended the diabetes research authority of the National Institute of Arthritis, Metabolism, and Digestive Diseases. The Congress recognized that the problem of diabetes transcends the rigid, categorical structures of the National Institutes of Health. As a result, the Congress specified that all Federal health programs and activities relating to diabetes be coordinated by the National Institutes of Health, 'to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.' It is this type of coordination, which facilitates communication and program efficiency, that we wish to encourage. We believe greater communication would help to overcome the rigid structures which tend to develop from highly categorized laws or programs."

C. Recommended Amendments to S 1596

In order to help ensure that S 1596 would not increase fragmentation, we strongly recommend that the Subcommittee consider two amendments to this proposal.

First, the Association recommends that Section 3(b) be amended to include (as nonvoting members) representatives of the Department of Labor, the Department of Transportation, and other appropriate agencies. The addition of these individuals would help promote greater intra-agency communication and coordination.

Second, Section 4(a) should be amended to include, as a major function of the Center, active coordination of all Federal activities--rehabilitation services, research, training, education, transportation, vocational placement, nondiscrimination, etc.--which affect handicapped individuals.

These additions to S 1596 would further increase its promise of strengthening opportunities for all handicapped citizens.

The American Occupational Therapy Association appreciates this opportunity to present its views on these important Federal programs, and will be pleased to provide further assistance to the Subcommittee.

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[1] Statements submitted on March 4, 1977 and testimony presented on March 31, 1977.

national association for retarded citizens
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Executive Director

August 1, 1977

The Honorable Jennings Randolph
Chairman, Senate Subcommittee on
the Handicapped
Room 10-B, Russell Senate Office
Building
Washington, D.C. 20510

Dear Senator Randolph:

The National Association for Retarded Citizens, its 1,900 local units, and its more than 250,000 members wish to be put on record for its continued strong support of the provisions of P.L. 94-142, the Education for All Handicapped Children Act. We are aware of the criticisms and amendments being sought by certain national organizations that could jeopardize the intent of this landmark legislation. NARC opposes any such amendments, at least for the time being, until such time as the Act has had a chance to take effect; and all of us involved in the education of handicapped children have had a chance to meaningfully address the Act's impact.

The National Association for Retarded Citizens stands ready to assist the Subcommittee in any way to facilitate the oversight of this Act. As you know, the role of the parents of handicapped children is a most important one in fulfilling the requirements of the Act. Parents then, including many of our members, will have first hand knowledge of how the Act will enhance the educational opportunities for all handicapped children. In addition, our state and local units will be carefully scrutinizing efforts of state education agencies and local education agencies as they implement the Act. Information from these sources should be very valuable to the Subcommittee, and we intend to share it with you when it becomes available.

Until then, we strongly urge the Subcommittee to allow the Act to be implemented as currently enacted and to hold off on any new amendments until the initial implementation efforts are under way.

Thanking you for your outstanding efforts on behalf of handicapped citizens, I am

Sincerely yours,

Marion P. Smith

Mr. Marion P. Smith
Chairman
Governmental Affairs Committee

MPS/mja

cc: Paul Marchand

Margaret Scheffelin
3015 Root Avenue
Carmichael, CA 95608

Received
Date 8/3/77
Subcommittee on
The Handicapped

AUG 3 1977

July 14, 1977

Honorable Jennings Randolph
Senate Subcommittee on the Handicapped
Room 10-B
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator:

I have been asked by the ACLD Governmental Affairs Committee to present this testimony of my concerns as the nation moves in implementing the concepts and requirements of Public Law 94-142, the landmark legislation on the Education for All Handicapped Children Act of 1975.

Before I present my thoughts I must say two things. First, I write as a private citizen, not as a representative or an employee of any organization, agency, or business. Second, I am personally pleased to be asked to contribute my thoughts. I hope that these brief statements will be useful to you and the members of your committee as they carry on the nation's work for all children.

My concerns all focus on people: children, parents, and teachers.

Statement

These things I believe.

1. Parents, teachers, and children all want the same thing for each other and their endeavors--a successful and productive adult life and a profitable, lifelong series of learning experiences.

2. Teachers are human beings who have the responsibility for increasing children's performances.

3. Many people tell teachers what they should get done, but not so many people are able to help teachers do what has to be done.

4. Tests don't teach. People do.

5. Regular classroom teachers are scared of what they think is going to happen to them as "that federal law" starts to work in their school.

Honorable Jennings Randolph
July 14, 1977
Page 2

6. The days of the unsure, ill-informed, quiet, "I don't want to bother you, but" parent are just about gone forever.

7. Most people don't know how to notice children--how to analyse what the kids can do, and in what situations. But that's exactly what teachers have to do. Much of the time, all too often, teachers work in a state of loneliness, surrounded by children, without much real help close at hand. Sounds bleak? It is. It makes conscientious teachers wear out and give up.

8. Many people have information about kids, but they don't know it's important. Or maybe nobody ever asked them. Example? A youngster is usually late to music class and always on time to work at a music store. The teacher thinks "The youngster can't tell time." The employer thinks "Golly, here's a kid who really wants to keep a job." The teacher and the employer should compare notes. There's got to be a useful exchange.

9. There's something wrong in a country where trained teachers can't find jobs and lots of kids need special intensive help.

10. Members of Congress may hear so many complaints about the hard work required to make PL 94-142 work that they'll get discouraged. Don't let that happen! Members of Congress should feel proud in their collective work over the years. You have stirred the conscience of people all over the county.

    You've given thousands and thousands of children a chance to grow and to learn. You've made it possible for children to learn to talk, to walk, to draw pictures, to smile and laugh.

After all, what is learning? It is a measurable, verifiable change in performance.

And changes in performance is what life and learning are all about.

Senator, thank you for all you've done. Keep up your good work.

Sincerely,

Margaret A. Scheffelin, Ph.D.
Member, Professional Advisory Board
Association for Children with Learning Disabilities, 1972-75

cc: Hyman Gardsbane, O.D., for the Governmental Affairs Committee of ACLD

Senator **Stafford**. Having made it almost at 11:30, the Chair will now declare the subcommittee in recess until 9:30 tomorrow morning in the same room.

[Whereupon, at 11:35 a.m. the subcommittee adjourned, to reconvene at 9:30 a.m., Wednesday, June 22, 1977.]

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1977

WEDNESDAY, JUNE 22, 1977

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED
OF THE COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:35 a.m., in room 4232, Dirksen Senate Office Building, Senator Jennings Randolph (chairman of the subcommittee) presiding.

Present: Senators Randolph, Stafford, and Hatch.

OPENING STATEMENT OF SENATOR RANDOLPH

Senator RANDOLPH. A pleasant morning to those who continue to be present at this series of hearings. I know that many of the individuals who are here are those who were here yesterday and the day before. This is very encouraging to us. We know you are intensely interested in what is being done.

Our witnesses today as on other days are concerned and interested individuals who counsel with the subcommittee on the efforts we have to make to improve the programs for handicapped persons and the participation of handicapped individuals, including children, in our American system.

I do not want to be philosophical this morning except to say that I look on each day of these hearings not just as another hearing. I look upon it as an opportunity to have witnesses counsel with us. This, as many of you know, is the 12th day of our hearings during the 95th Congress. I do not believe we have ever had such an extensive program of hearings in our Subcommittee on the Handicapped.

The focus of our discussion today with witnesses will be Public Law 94-142.

Our first witness is Dr. Offa Lou Jenkins. Will you come to the witness table please. I know that you served us well in West Virginia when you were at Marshall University at Huntington. We have a feeling that even though you changed States and now represent the Special Education Department at Winthrop College, S.C., that you still have the same affection for West Virginia. We remember you very well for your constructive effort there.

Will you give your correct name and the department or the interest that you speak for this morning?

STATEMENT OF DR. OFFA LOU JENKINS, ED. D., CHAIRPERSON, DEPARTMENT OF SPECIAL EDUCATION, WINTHROP COLLEGE, ROCK HILL, S.C.

Dr. **Jenkins**. Thank you, Senator Randolph, and others who are here this morning on the Subcommittee for the Handicapped. I am Offa Lou Jenkins, chairperson, Office of Special Education, School of Education, Winthrop College, South Carolina.

Senator **Randolph**. Where is Winthrop?

Dr. **Jenkins**. Rock Hill, S.C.

Senator **Randolph**. Well, some people do not know where Rock Hill is.

Dr. **Jenkins**. It is a few miles west of Charlotte, north of Columbia and Charleston. It is right in the heart of the Catawba Indian Nation. We in Rock Hill are sitting right in the middle of the Catawba Indian Nation.

So this morning I am representing many people. If I had all of the persons whom I represent beside me, this room would not hold them. I have contacted numerous persons, asked their advice, so I come this morning with humility but also with determination that we shall share together many things.

No matter what I say or what I have written, at a later date I will probably wish that I had said and done some other things. We are committed to do some things today. I placed in your hands a written statement. I will voice other concerns, and I will call these to your attention as well as summarize some of the written material.

I want to share with you some personal and professional ideas. Why am I here today?

First, because I believe in children. I believe in little ones, big ones, chubby ones, thin ones, fat ones, and slow ones. There is faith in their eyes, love in their touch, and hope in their attitude. I thrill with children at life's joys, and I run with them through tall grasses, and I bow with them and worship, and I hold them close in tragedy.

Yes, I believe in children. They are the fragile dream of yesterday. They are life's radiant reality today, and they are the vibrant stuff of tomorrow.

I believe in children, for wherever I go, to a mountain village, industrial center, or open country, I find people—like you—who were yesterday's children, nurtured in the things of Christ, at work in building the Kingdom of God.

Yes, I believe in children.

These words are not my own originally. I paraphrased them from a selection from an unknown author selected by Bette Bishop.

The second reason I am here today is because I believe in helping people learn how to learn. That is what Public Law 94–142 is all about.

Mr. Chairman, I can well imagine the frustrations that some administrative persons are encountering today as they attempt to circumvent the implementation of Public Law 94–142. Too long have we as parents, educators, as teachers, as administrators, and others, operated on the idea, "I think Suzy is doing all right" or "She is getting along OK."

Statements such as these may be fine for social discussion in which you really wish to be noncommittal. But individual education plans or programs, written in observable and measurable terms are necessary so that accountability may be assured. Public Law 94–142 can and will be implemented.

No one ever said that these would be easy or inexpensive tasks. There are many persons who scream "No way"—but these are persons who have not read or studied the law.

You, Senators and your staffs are to be commended for your continuous efforts, for the clarity and comprehension of this legislation, "the rights for the handicapped."

My written statements include comments related to definitions. Many persons insist upon being specific to their own detriment. They are grasping for a ploy to use as an entrapment. Let us not be so naive.

Also I have mentioned the need for varying ratios for the multihandicapped, the very young, severely developmentally disabled, and for the Native Americans with handicapping conditions, who are on reservations or are lost in public school places. Their needs must be met, and accountability must be built in.

Another area of concern of mine is evidenced on page 4, paragraph 4, of my written statement, a term that says "exceptional" should include the gifted. For, Senators, the most retarded children in our nation are the neglected gifted children, and especially the handicapped gifted.

You and your staff have wisely introduced Senate bill 725, which is the base foundation for implementing Public Law 94–142. Without these discretionary programs, appropriately trained personnel, both in quality and quantity, cannot be produced. My years of working with teachers of very exceptional individuals—for I was teaching 30-some years ago—before I was labeled a special educator, my work with LEA's, SEA's, and institutions of higher education as well as administrators, convinces me that children will learn and learn how to learn, and in direct ratio with their instructor's level of performance.

In my presentation there are several pages of discussion relating to technical assistance to local school systems, the possibility of establishing needs assessment, of training programs, of the dean's grants, of special projects. And let me add that of the special projects that were approved, there were funds only available to provide assistance for one out of six. These kinds of statistics alarm me. The concern for physical education and recreation and severe understaffing of the Bureau of Education for the Handicapped—when I go into the Bureau and see people at major administrative levels of proficiency having to type their own memos, this is ridiculous.

May I also add that I was listening to the news last evening, and I heard a statement that there are no national laws or standards for summer camps for any children. There are no staff requirements, and 45 of our 50 States have no laws requiring any kind of standards for children who are involved in summer recreation programs. As a person who has conducted summer camp programs in West Virginia for 7 long years with exceptional individuals, and we had not an accident of any kind because we had superbly trained people, I am concerned about recreational programs, and especially for the handicapped. Here again, Senator, we have another challenge.

I did not write into my presentation any case histories, but I will share with you, very quickly, two that have caused me to resolve that if possible, no individual whom I teach will ever become "A Cipher in the Snow." Jean Mizer's article by that name illustrates how a whole school in Milford Corners, U.S.A., allowed Cliff Evans, a slightly built teenager who withdrew until he literally fell off the bus into a snowdrift and died and there was no one to go to the funeral as a friend.

About 5 years ago, I met a 36-year-old man, a triple congenital amputee. A rehabilitation counselor, whom I had had in class, invited him to come and meet with the 30 of us. Here was a man who had been born with only one leg and both hands off just below the elbows. At the age of 6 months his mother placed a spoon between the pegs that were his arms and he began to feed himself; therefore, his shoulders never developed laterally as ours have. He learned to care for himself totally. He was one of more than seven children born to a coal miner in eastern Kentucky. His brothers and sisters accepted him for what he was, an apparently mentally capable young person. At six, his brothers placed him in an express wagon and pulled him down the hollow road to the school.

Behold what I am going to tell you, for here we meet mainstreaming at its best, total receptivity. The first grade teacher looked him over and remarked, "Do they expect me to teach a freak?" Gave him crayons and put his chair out of the way in the corner. Three years later he was taken at the age of nine to the Miners' Hospital where the "doctors from over the water"—to quote him—began to experiment with implanted rods in his biceps. But at nine, he had never had the pincer grasp taught; therefore, the rods, et cetera, never worked. But for 3 years they tried.

Later he was taken to several different State rehabilitation centers and was taught some "gainful occupations—refinishing furniture, et cetera. At this time he met and married a physically handicapped young woman. Now she has become totally blind and he has the care of her, himself, and a trailer—this he does. As we talked, I asked him what we could do to help him. And his answer really hurt, "Teach me to read, do numbers, et cetera. Teach me. I know my ABC's and when the mail comes, I have to call each letter to my wife so that she can tell me the words." No one had ever done any educational plan and followed it through—25 years of this kind of piecemeal effort.

Mr. Chairman and members of this committee, this kind of thing cannot be tolerated. We know how to do, and what to do in matching materials and methods to levels of performance. Let me add that the triple amputee was gotten into basic education and his progress was dramatic.

Let me speak of a severely involved brilliant girl with a cerebral palsied condition. Her youth was spent in hospitals, on homebound instruction, and thus she completed the high school requirements. I first met her as a 34-year-old who looked 17 (she had been sitting at home for 13 years because the local college would not permit her to attend because she could not manipulate the stairs.) This girl at times evidences the social-emotional performance levels of a 5 year old or less. Never had she had interaction with peers, such smothering, such a lack of self-discipline. She is now a college graduate and is beginning to come into her own as a writer. So many years of wasted self and contributions.

Let us go on with the business of early identification, parent training, paraprofessional and professional training, of educating each child and youth according to his/her potential.

Senator Randolph, Ms. Forsythe and others, the time is upon us to effect Public Law 94–142. "Let our doings catch up with our knowings." We have been given rhetoric about too much work, too much cost. No one ever said this was going to be easy.

All we ask is the strength to do, the manpower that we need, and appropriate funding. Sure, it costs more in some of the more expensive States. The per pupil ratio of spending in South Carolina is 50th in the Nation. But believe you me, just as I saw in West Virginia, we have excellence in teacher preparation and in teacher performance. We do not have expensive private schools in South Carolina in which we place handicapped people. It is time education received adequate and appropriate funding.

Each of us knows or could become informed as to the lack of priorities that we have had for long-range appropriate educational services.

If some of our other Federal agencies had been funded at the same level that education has over the past 50 years, the first ship for World War II would still be on the drydocks in Newport News.

I commend you and I thank you. I thank the persons who have given me the support for coming here. I would be negligent if I did not pay tribute for personal and professional support given by the Honorable Jennings Randolph and his staff, especially Ms. Forsythe, and her staff; to Dr. Martin La Vor, and his staff; also recognition of leadership given by the Council for Exceptional Children, and staff; Dr. Fred Weintraub; A. Abeson; Joe Ballard; Dr. Edwin Martin of the Bureau of Education for Handicapped and his staff. The rights of exceptional children and youth with handicapping conditions will be assured because of you and others too numerous to mention.

Thank you.

Senator RANDOLPH. Before discussing your excellent presentation, Dr. Jenkins, I must call attention to what apparently will be the situation in the Senate today.

Previously we have had a unanimous-consent agreement that not only this subcommittee, but any subcommittee of the Senate, would be able to meet beyond the 2 hours following whatever time the Senate came into session. Apparently that will not be so today. So we have only 2 hours from the beginning at 9:30, and that means that at 11:30 we will have to conclude our hearing. For that reason, I ask your cooperation, so that all our witnesses, some from faraway States, such as Texas and Iowa, may be heard.

We appreciate your comments, Dr. Jenkins. I love your emphasis on loving children and believing in children.

I saw a bumper sticker a few months ago on the back of a car, and it drew my attention. It said something I suppose I shall never see again. It said: Have you hugged your kid today? That is what you were saying in a sense here. Have you helped your child today, the child who needs help?

As you know, our Bureau of Indian Affairs schools serve, I believe, only about 25 percent of native American children. Do you have specific recommendations as to how the handicapped native American children could be better served through perhaps some type of Federal legislation? Is that the route we should go?

Dr. **Jenkins**. I would like to present that in writing to you.

Senator **Randolph**. That would be helpful if you would respond in writing for the record.

We may have one or two additional questions that we will present to you in writing, and you can respond for the record.

Thank you very much.

Dr. **Jenkins**. Thank you.

[The prepared statement of Dr. Jenkins and answers to questions submitted by Senator Randolph follow:]

STATEMENT OF

Offa Lou Jenkins, Ed.D.
Chairperson

Department of Special Education
Winthrop College, Rock Hill, S. C.

To the

SENATE SUB-COMMITTEE ON THE HANDICAPPED

ON

EDUCATION OF THE HANDICAPPED

June 22, 1977

Jointly presented
in cooperation with

John J. Gallien, Ed.D., Professor of Special Education
Reid Johnson, Ph.D., Director of School Psychology
Ronald Weber, Asst. Professor of Special Education
Robert Black, Director of Programs for Handicapped --
State of South Carolina

Mr. Chairman, members of the Subcommittee on the Handicapped — Education of the Handicapped and other distinguished persons.

One does not need to furnish this committee an historical perspective of meeting educational needs for children with handicapping conditions. However, I deem it important to note that eleven years ago an Ad Hoc Subcommittee on the Handicapped of the House of Representatives had as the initial speaker Dr. Samuel A. Kirk, a pioneer in Special Education. Dr. Kirk and many others have demonstrated through theory and practice that early intervention, appropriate identification and matching of materials and methods to the individual's needs results in positive changes.

Today, we continue the processes of review and reaction to P.L. 94-142, "Education for All Handicapped Children Act of 1975". Much verbalization has been given and reams of paper have been written in support for or rejection of this law.

Thank you Mr. Chairman, for providing the opportunity to bring my written statements as well as some from constituents who could not attend. I speak to you as one with more than twenty-five years of serving as a concerned parent and practicing educator from infancy programs, kindergarten, every grade in public school, adult basic education for illiterates, and University/ College level through teaching doctoral students. I share with you personal and professional concerns related to the implementation of P.L. 94-142.

P.L. 94-142 can and will be implemented. No one ever said it would be easy or inexpensive. Many persons who scream "no way" have not bothered to read or study the law in part or entirety. My statements will follow the Conference Proceedings for P.L. 94-142 and hearings that have followed. Sec. 601 gives the general provisions, and provides an overview for the remainder of the law. Each of us attending this hearing, and others who have responsibilities for providing services to persons with handicapping conditions must become informed and accept the role of educator. The opportunity to be a "Renaissance person" in the area of individualizing instruction is upon us. Awaken, renew the learning processes and be about the business of providing "free and appropriate education and related services designed to meet their unique needs, to assure the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children."

Mr. Chairman, the writer has reviewed the June 1976 version of P.L. 94-142; the printouts from the Federal Register, Vol. 41, No. 230, Monday, Nov. 29, 1976; and the Thursday, December 30, 1976 Federal Register. Very probably other printed information has become available which was not available to me; therefore, my reactions will be very general but will also indicate specific sections or statements. The writers of the papers that are attached included, Dr. John Gallien, Dr. Reid Johnson and Mr. Ron Weber. These people have carefully and conscientiously reviewed and commented on specific statements (see appendix A-1&2)

Sec. 602 (17)

1. It has been called to the writer's attention that some persons are attempting to demand specific definitions, i.e., "related services", as those services available; whereas, understanding must be communicated that IEP's

indicate the services necessary for appropriate educational (learning) processes. IEP's must include comprehensive offerings for long range goals and immediate objectives with continuous evaluation and re-evaluation.

2. There are those who will demand specific definitions of the terms, i.e., "free appropriate education". Let us not be so naive as to be entrapped by that ploy.

3. The definitions as given in the 1976 Section 602 appear descriptive and since each states law is to be supported rather than supplanted, then additional definitions would more appropriately be made at the state and/or local levels.

4. Mr. Chairman, many states have used the term "exceptional" to describe the special children and included the "gifted" among ones to be served. At an early date a similar plea was entered to the Subcommittee by Harold Perry, President of the Council of Exceptional Children, with suggested changes in nomenclature. The writer strongly urges consideration of the more inclusive term "exceptional: The gifted child who is not identified, who has little or no opportunity to use his/her gifts, and whose educational program goes undifferentiated is the most retarded of our citizens! Truly, we do not want to deprive those who have much to share.

Sec. 604 -, provides for a National Advisory Committee on Handicapped Children. If the Deputy Commissioner and staff deem this to be a viable and necessary committe, it is recommended that the committee be funded at the Commission's.

Sec. 611-(5)(A)(ii) states that "as part of such percentage (12 percentum of number of all children aged 5 to 17), children with specific learning disabilities to the extent that number of such children is greater than one-sixth of such percentage." This appears too restrictive. Admittedly, safe guards must be included so that every child who is evidencing a learning problem is not "dumped in" and called "learning disabled"; however, experience and reality indicate that 2% is too small. The original formula that was included in the hearings will pose problems. The law says that Section 611 (a)(3) provides for "child count" October 1 and February 1. It would appear that February 1 would be the better time rather than doubling the paper work and perhaps delimiting resources by the early count. Section 611 (f)(1) and (2) refers to the BIA and Secretary of Interior as receivers of funds for the education of handicapped children on reservations. The implementing of P.L. 94-142 for Indian children with handicapping conditions must include accountability in assessment, remediation and utilization of funds for appropriate education in accordance with the law. Equality of education will include equality in accountability.

Sec. 611 (a) 4 speaks to "average per pupil expenditure". No accounting provision is included for multiply handicapped, i.e., cerebral palsied speech and hearing impaired, who needs triad plus of services.

Sec. 612 (2) B indicates that "a free and appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978. However, funding is a five (5) year Phase-in. The implementation must coincide with funding. If this is not brought in step LEA's will evidence problems in providing appropriate educational services.

Sec. 613 relates to the State Plans and sets forth responsibilities of State educational Agency (SEA) to monitor educational plans for all children with handicapping conditions. Many of the arguments related to specificities are unnecessary because P.L. 94-142 supports existing state laws.

Sec. 614 delineates and describes role(s) and responsibilities of the local educational agency (LEA); includes parent participation and gives directions for implementing the LEA plan developed for P.L. 94-142.

Sec. 615 outlines procedural safeguards relative to examining records, protection of the child, native language, hearings appeals and related actions. Here again, degrees of language differences must not become prohibitors for educational services.

Sec. 616 discusses measures for witholding funds and judicial review. Interpretation of and education of usage of this section is vital to proper implementation.

Sec. 617 sets forth duties of the Commissioner for specific activities, technical assistance, training, dissemination of information, child find, reporting of financial status, change regulations as needed, maintain appropriate degree of confidientiality, and employ appropriately prepared and enough personnel to conduct business as required. Here again, appropriate funding determines ability to perform.

Sec. 618 indicates the Commissioners responsibilities for evaluating the program's impact. Procedures for data collection, evaluation, reporting to Congress, recommending necessary changes and surveying cost effectiveness by the Commissioner are included. It is stated that "there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section." Adequate funding must be made available or the statutes will be without value.

Sec. 619 (a) relates conditions for "incentive grants" and states that the maximum is to be $300 per child aged 3-5. For a severely and profoundly involved young child demanding comprehensive medical,-physical, language development care — $300.00 is not enough! One would almost question the advisability of early identification. A different funding formula should apply according to degree of need.

Sec. 620 describes responsibility of Commissioner who assigns payments according to eligibility as established by previous sections' criteria for reimbursement

SUMMARY — P.L. 94-142 will be implemented in accordance with the assumption of responsibility by each person at national, state and local levels. Mr. Chairman, it is a law introduced and passed because of genuine interest and concern by you members of the Sub-committee, the members of Congress, by the staff members who have labored long, by thousands of parents of children, by professionals who have given support and encouragement. It will be as good as we make it. Granted there may be changes necessary.

On page 56967 of Federal Register, Vol. 41 No 252--Thursday, Dec. 20, 1976, to quote "the Department sees the development of regulations as an evolutionary process which will continue over a period of years", is very encouraging. The words of P.L. 94-142 are not "Holy Writ" and must not be interpreted as such. Granted, many of us view it as the best yet for those with Handicapping conditions; however, if changes are needed we will work as diligently to effect those as we have to get P.L. 94-142 passed. We must know that the cost in time and money will be extraordinary; therefore, let's be about the business of giving extraordinary people their equal and ordinary opportunities. When we speak of "Least restrictive environment" that we are aware for a fragile child -- one with many needs, a regular classroom may be the most restrictive environment.

Many statements, i.e., "non discriminatory testing". "hard research," "all children", "no one tool", "no generally accepted diagnostic instruments which can be singly etc.", "no list of standardized diagnostic instruments", etc., etc., reflect some individuals' levels of incompetency. Truly, those of us who have been at the practictioner's level know that testing does discriminate — it reflects what information the child may or may not be using; however, it also provides levels of entry necessary for program planning.

There are persons using assessment instruments for purposes other than for which they were developed. Careful attention must be given to adequate educational offerings -- based on IEP's that have been developed on appropriate assessment data.

Again, Mr. Chairman. I thank you for providing this opportunity and I commend you and your staff as well as other constituents and supporters who have brought P.L. 94-142 this far. I implore that all efforts for adequate funding and continued amendments and revisions be made as needed. Attention must be given to having the best regulations possible, but we need to be about the business of effecting free and appropriate educational experiences for those with handicapping conditions.

The speaker would be negligent if tribute were not paid to the personal and professional support given by the Honorable Senator Jennings Randolph and staff, especially Ms. Patria Forsythe and her staff. Dr. Martin LaVor, senior legislative associate who works with diligence. Also, a recognition of the leadership given by the Council for Exceptional children, and staff; Mr. William Geer, Executive Director and Drs. Fred Weintraub, Al Abeson, and Joe Ballard; and to Dr. Edwin Martin, of the Bureau of Education for Handicapped and his staff. The rights of exceptional children and youth with handicapping conditions will be assured because of you and others too numerous to mention.

Statement presented:
Senate Subcommittee on the Handicapped --
Education of the Handicapped

by Offa Lou Jenkins, Ed.D., Chairperson
Department of Special Education
Winthrop College, Rock Hill, S.C.
29733

The discretionary programs that are included in Senate Bill 725 are the base foundation for the implementation of Public Law 94-142, the Education for All Handicapped Children Act of 1975. Without these discretionary programs, the appropriately trained personnel, both in quality and quantity, will not be produced. My concern comes from the background of special education teacher, years of work with state departments of education, and university teaching and administration.

A section in P.L. 94-142 requires that each state develop a comprehensive system of personnel development to "ensure that all personnel necessary to carry out the purposes of the Act are appropriately prepared and trained, and that activities sufficient to carry out this personnel development plan are scheduled." This statutory mandate is the basis for the most critical planning effort ever mounted in education. In order for this effort to be funded adequately, each state needs a minimum of $25,000 for basic staff and planning work. This could be placed under a section different from the current regular education, program assistance, and special projects sections. It could be called something like "Projects of Significance to Implementing P.L. 94-142." Some projects now funded or in application would fit into that area as well. An example is the project funded to the National Association of State Directors of Special Education. It works with state education department personnel in implementation of P.L. 94-142. The discrepancy evaluation model project that has been working with BEH-funded programs in training is another example. This project has made significant contributions to evaluation and accountability of training programs. Both of these projects are past the usual three years given to special projects. They need to be funded over at least three more years. Some kind of authorization needs to be made for such projects. The committee understands much better than I how this could be worked out.

Another area that needs to be considered is provision of technical assistance to local school systems and state education agencies from the Division of Training in the Bureau of Education for the Handicapped. This technical assistance is a direct input type for systems from the Division of Traiding. Each State Grant Liaison Officer should know more about each state's training programs than anyone else. They need some resources available to work with these agencies in a cooperative way. In the states we need direct assistance from our Project Officers but they do not have the time or travel and consultant money to come and work with us. The kind of cooperative approach that could be most helpful to us would be that the Bureau would furnish people that have a broad overview of the things across the nation as well as specific kinds of information is a specialty area such as the deaf, the severely hearing impaired, early childhood, severely handicapped, the blind, the autistic, and other low incidence areas. This would allow each state or region to develop training capabilities. This is not to suggest intensive oversight by Bureau staff but to be certain that they are available on a need basis to assist with resources.

There still is need for a service function in relation to training programs. Without this the availability of "hands on" practicum and student teaching is not available. This in-depth need is especially needed with the deaf, blind, deaf-blind, autistic, and other severely handicapped children.

The Dean's Grants that are funded need to have more that three years of funding to meet the change-needs of colleges of education. They surely have enough national visibility and input to be like the projects I mentioned earlier. There has to be a direct relationship to the nature and quality of training made available to regular educators and the work they do to keep handicapped children in their least restrictive placements.

Many people who have submitted special project proposals have been told that they were recommended for funding but there was only enough money to fund no more than one in six recommended for funding. People spend much time in writing and submitting these proposals. They are understandably disappointed and thwarted when they do not receive funds simply because there are not enough dollars to fund all projects recommended. Those I talked with are convinced that a special project points the way for better services and programs for children. If there is not enough money for them, how can we develop these critical areas?

In physical education and recreation, and in therapeutic recreation, the development has been rather sound and careful in approach. Since this area is mandated in P.L. 94-142, professionals in that area feel a continuing need to have more funds to develop supportive personnel.

Those of us in state departments and universities find it difficult to secure enough time from our Project Officers and program advocates to really understand what is happening at the national and across the nation levels. We understand that understaffing of the Bureau is a critical factor but we also understand that implementation of P.L. 94-142 is a Federal mandate. Some way, we need to help the Bureau become a more activity type participant with us in the states and in the universities and colleges. Such an active particpation has to be developed through discretionary programs since the money going to local and state school systems under P.L. 94-142 does not carry the quality and experimental aspects that are already possible under provisions of Senate Bill 725.

Responder:
John J. Gallion, Ed.D.
Professor of Special Education
Winthrop College
Rock Hill, S.C. 29733

Subpart C: Services

Section 121a 210 - 121a 214

Concern:

Whether the regulations should require a local education agency to provide all of the Individualized Education Plan (IEP) services for first priority children in the school year 1977-78. My concerns related to this issue are:

Sub Part C, section 121a, 203

1. To provide appropriate services which will be qualitatively and quantitatively effective and efficient as SEA's and LEA's implement the long range goals will require a needs assessment. A needs assessment may have been conducted according to mandates under P.L. 93-380 but my observation is that most LEA's do not have adequate information at this time nor can they be expected to have it by September of 1977.

2. Immediate full implementation of all IEP services during the 1977-78 school year would tend to encourage the quick employment of personnel who are not fully qualified simply because such large numbers would be in demand and the work force quantitatively and qualitatively unavailable. This would subsequently result in inappropriate services which would have to be remediated at a later date.

3. Immediate full implementation of IEP services in the 1977-78 school year without needs assessment and planning would be difficult, if not impossible, to justify when requesting additional funds from SEA and LEA boards of education. This is particularly true during this period of economic uncertainty and economic accountability.

Recommendations:

The following recommendations to assure that all of the services required for an IEP are available by September 1978:

1. During the 1977-78 school year each LEA, which has not done so, will conduct a needs assessment of services needed to fully implement all services related to IEP and employ personnel, contract or make other provisions, for such services by September 1, 1978. This will assure a planned approach which should result in the employment of qualified personnel needed to provide the required services.

March 8, 1977

Responder:
Reid Johnson, Ph.D.
Asst. Prof. of Psychology
Winthrop College
Rock Hill, S.C. 29733

With reference to Federal Register Volume 41, No 230,
Monday, November 29, 1976. pp 52404-52407

SUMMARY OF CHANGES TO
LD Guidelines

Sec. 2. (b) "...official responsible for the administration of special education programs for the handicapped children at the agency" changed to "superintendent or his designee."

Sec. 2. (c) "The team must include" - (add) "but not be limited to:"

Sec. 2. (c) (3) "At least one additional individual certified, licensed, or approved by the State educational agency to conduct individual diagnostic examinations of children, such as a school psychologist, speech clinician, or remedial reading teacher" changed to "A State certified/licensed school psychologist." Note: Some concern expressed over allowing a "licensed" school psychologist who may not be certified by the SEA to serve on the team.

Sec. 2. (d) (1) "...the procedures..." changed to "...these procedures..."

Sec. 2. (d) (2) Omit "diagnostic."

Sec. 2. (d) (3) "After the team has completed the evaluation, it shall meet at least once to:" changed to "after the evaluation has been completed, the team shall meet at least once to:"

Sec. 3. (a) "The team may not identify a child as having a specific learning disability if the severe academic discrepancy is primarily a result of" add "a demonstrable handicap such as:"

Sec. 3. (a) (1-4) Committee expressed concern over the exclusion factors and the difficulty of defining such terms as "cultural" disadvantage. No specific changes recommended since these factors reflect 94-142 language.

Sec. 3. (c) Committee voted by a slim majority to maintain the 50% of expected achievement as the operation of severe discrepancy. Some members felt that this was too severe and recommended 60 or 70% as more realistic figures.

Sec. 3. (d) Substitute the (Johnson) Deviation Formula:

A severe discrepancy is defined as a difference of 1.5 Standard Deviation between any I.Q., full-scale or subscale, and any of eight achievement areas. (I.Q. scores must be derived from a Wechsler, McCarthy or Binet test; Achievement scores must be derived from a psychometrically appropriate instrument measuring math concepts, math operations, reading recognition, reading comprehension, spelling, receptive vocabulary, expressive vocabulary, and/or written expression.)

Sec. 3. (f) ..."each team member states in writing:" changed to "each team states in writing and each member signs:"

Sec. 3. (f) (2) Reference to formula - any changes in the formula will also be reflected here.

Sec. 4. (a) (1) "Or group evaluation techniques" - add "administered individually, and"

Sec. 4. (a) (2) (b) "group evaluation techniques" - add "individually administered"

Sec. 5. (a) "...the team shall request that the parents seek a medical examination for the child" changed to "...the LEA shall require a medical examination for the child."

Sec. 6. (b) "...a team member shall observe the child in an educational environment recognized by the State as appropriate for a child of that age." changed to "...a team member's observation of the child in an appropriate educational environment is desirable if feasible."

Sec. 7. (b) add "(7) A statement of long term educational objectives."

Sec. 7. (c) Omit "...and whether it reflects his or her conclusion. If it does not represent his or her conclusion, the team member must submit a separate statement presenting his or her conclusions."

Sec. 8. (c) (1) Omit "The number of children referred for evaluation of a specific learning disability."

NOTE: The "Severe Discrepancy (50% level) LD requirement forces LD children to be "more handicapped" than MR children, in order to receive special education.

Other Primary Concerns include:

1. Lack of sufficient support to higher education to provide needed personnel to implement the law; especially in not-teaching service areas such as School Psychology and School Social Work.
2. Restriction of SEA spending to "Priority 1 & 2" restricts too much; disallowing other urgent needs and penalizing LEA's who have already begun service to all HC's, etc.
3. LEA's will bankrupt 94-142 funds with only 5-6 kids if districts have to pay for institutional care for multiple handicapped and profound M.R., etc.

March 8, 1977

QUESTIONS PRESENTED TO
OFFA LOU JENKINS, ED.D.
WINTHROP COLLEGE

1. Do you have specific recommendations on how handicapped Native American children could be better served through the Education of the Handicapped Act?

2. One of the proposals made to the Committee was that the individualized education program be amended to assure that it is not interpreted as a legally binding contract. As a special educator, what is your feeling about the proposed change?

3. One of the other proposed changes is that the provision requiring State education agency responsibility and supervision should be changed so that it could be in accordance with State laws. What is your reaction to that amendment?

1. Native American children might better be served through the Education of the Handicapped Act if the following approaches or concepts are taken into consideration by agencies who have the responsibility of implementing of P.L. 94-142 for native American children:
   (a) A thorough understanding that Native American children who have handicapping conditions are children first, and secondly children with special needs.
   (b) The Education of the Handicapped Act, P.L. 94-142, has been provided assistance for additional and/or initial services through an entitlement of $2 million dollars to BIA. (Senate Report and Conference Report on the Interior Appropriations bill for fiscal 1978)
   (c) Cooperative planning among all national, state and local agencies, who deliver educational services to Native American children, must be accomplished and shall include consumer representatives.
   (d) Assumption of responsibility for educational planning must include parents, children, and other tribal representatives, i.e., in North Carolina the Cherokees have been assisted to self-direct their educational plans and assume responsibility in every way possible.
   (e) Native Americans with handicapping conditions have needs that are unique to each situation. However, many similar problems may have been encountered by other parents and educational agencies; therefore, exemplary programs should be made available so that the planners might choose from pre-tested solutions. Interventive processes that have succeeded in Appalachia, (School House 'Round the Bend out of the Appalachian Educational Laboratory), or with migrant workers in the South, could give direction to providing services to the handicapped

1. (continued)

Native American children who are homebound, or live in rural sparsely populated reservation areas.

(f) The $2 million entitlement requires a reporting of action by BIA. It is recommended that the BIA or whoever is administering education for Native American children be required to exhibit responsibilities for appropriate educational services which includes accountability and that adequate monitoring of programs for Native American children with handicapping conditions be provided at the national, state, and local levels.

2. As a special educator, and a person who has studied P.L. 94-142 diligently, it appears to me that a proposal to amend Section 614 (or other portions referring to the IEP) at this time is premature. For the first time we have legislation that requires that all persons concerned (SEA, LEA, parents, teachers, and children, etc.) be included in the planning. If all persons concerned develop the individualized educational program then the implementation should go more smoothly, will include provisions for revision, and provide measures of accountability. P.L. 94-142 was written, studied, reviewed and revised before it was passed so that it might serve to guarantee that all children with handicapping conditions would receive a free and appropriate education. The due processes, built into the development of the plan (Sec. 614-A), insure that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of severity of their handicap and are in need of special education and related services, will be identified, located, and evaluated. Provision is made for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services (needs assessment).

Section 614 (B) (5) "provides assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually." P.L. 94-142 appears to be receiving some inappropriate interpretations. Many persons are attempting to implement before becoming adequately informed and others are over-reacting and perhaps demanding excessive requirements which create unneeded burdens.

2. (continued)

The statement proposal that the individualized education program be amended to assure that it is not interpreted as a legally binding contract, appears to be unnecessary. The term "legally binding contract" may sound formidable (I re-read the proceedings and did not find that term); however, any-one attempting to effect accountability must establish a beginning base line with objectives (long range and short term) that are understood by all concerned, must follow the child's program according to his/her learning levels, be willing to revise and document as needed. Accountability for all may be assured through these measures.

3. The fifty states and seven territotial agencies, each have a representative called "a Chief State School Officer". The governing bodies of the States and territories have varying laws related to public education both regular and special. I was privileged to attend the hearings for two mornings and listened to numerous persons from throughout our nation testify with reference to P.L. 94-142. Several of those persons indicated that the supervisory responsibilities as set forth in P.L. 94-142 were in conflict with their particular state's laws and/or constitution. After another review of Sections 613 and 614 and other portions that relate to the responsibilities of State Education Agency (SEA), it appears that the Chief State School Officer (or whomever) would be the one to designate the appropriate person(s) to implement and monitor P.L. 94-142. There appears to be no justification to amend a national law to try to include the nomenclature of all the states and territories. It is anticipated that the regulations will include interpretative language for implementors.

P.L. 94-142 "Education of the Handicapped Act of 1975" provides the opportunities for the states and territories to develop a plan that is approved by their representatives; for local education agencies to develop plans in cooperation with concerned persons to send these plans to the DHEW-Bureau of Education for Handicapped through their state office. For those States and territories who have viable on-going programs for the handicapped supported by mandatory legislation which includes funding, P.L. 94-142 serves to support the existing state laws. Perhaps some of the states will recognize the need to survey existing processes, and recognize that some changes might be advantageous.

Senator **Randolph**. Our next witness will be Mr. Dullea. Senator Javits, who is a member of our Committee on Human Resources, wishes all the witnesses to know of his desire to have been here. His schedule will not permit, and he particularly wanted to say to you, Henrik, that he knows of your work and he joins you in the desire to have us strengthen the programs for handicapped.

Please identify yourself and the organization for which you speak.

STATEMENT OF HENRIK N. DULLEA, ASSISTANT SECRETARY TO THE GOVERNOR FOR EDUCATION AND THE ARTS IN THE STATE OF NEW YORK

Mr. Dullea. Thank you, sir. My name is Henrik N. Dullea, and I am assistant secretary to the Governor for education and the arts in the State of New York. Governor Hugh Carey is deeply committed to the education and welfare of children with handicapping conditions. As you know, Governor Carey was the author, while a Congressman, of the Handicapped Child Benefit and Education Act, and he has asked me to share his concern with you today.

I am appearing today on behalf of the Education Commission of the States, a unique interstate compact which brings together Governors, State legislators, leaders of the education community, and observers from the Federal Government for indepth discussions of common issues and problems. The commission has just completed its 11th annual meeting, held in New York City, and Governor Carey was honored to deliver the keynote address.

The Education for All Handicapped Children Act is landmark legislation which offers the promise of equal educational opportunity to all children whose special needs have been bypassed by our educational system for many generations. The Education Commission of the States and my own State stand ready to take the steps necessary to insure that the goal enunciated by the Congress of guaranteeing to handicapped children the availability of a "free appropriate public education which emphasizes special education and related services designed to meet their unique needs" shall be reached as rapidly as is humanly and fiscally possible. The provision of additional Federal funds to assist States and localities in meeting this obligation is a significant and welcome step, but major questions remain concerning both the sufficiency of these funds and the detailed procedural requirements set forth by the Congress as a precondition for their receipt.

Let me give you a few specific examples of the concerns which we have in New York State. Other States will obviously have somewhat different perspectives, but I believe it is important for the committee to be familiar with the position taken by States such as New York which have already demonstrated a significant commitment to the education of the physically, mentally, and emotionally handicapped.

Present expenditures for the education of handicapped children in New York are in excess of $690 million. The attached tables 1 and 2 provide details of this estimate for the 1977–78 school year. Of this amount, only $32 million or 4.6 percent is estimated to be received from the Federal Government, primarily from ESEA—title I (handicapped) and Public Law 94–142.

The New York State Education Department now estimates that 243,336 handicapped children in our State between the ages of 3 and 21 are receiving an education which meets all of their educational needs. An additional 136,465 children are estimated as not presently receiving an education—primarily the 108,000 children in the 3 through 5 and 18 through 21 age categories not now guaranteed an educational experience under State law. Of those children within the traditional school age group, the largest category of unserved children is that of students with specific learning disabilities.

New York State provides educational services to children with handicapping conditions through a wide variety of institutions; regular schools; intermediate schools, or, as we call them in New York, boards of cooperative educational services (BOCES); State-operated schools for the blind and the deaf; statutorily recognized private schools for the handicapped whose placements are made by the commissioner of education; private residential and nonresidential schools both within and outside the State; and other State agencies with residential facilities for the care and treatment of children with handicapping conditions. Approximately 8,000 or 3.2 percent of the 243,000 children whose educational needs are now being met receive these services in private institutions, with approximately 700 or 0.3 percent of the total in residential facilities.

As the members of this committee can well appreciate, cost of providing an appropriate educational experience to every handicapped child is quite substantial and varies greatly according to the particular needs of the child. While we do not yet have a fully developed unit cost methodology for all types of handicapping conditions, some indication of the magnitude of these expenditures can be ascertained from the available data. In 1975–76, the estimated average current expenditure per handicapped child in public schools was $4,400, and expenditures per handicapped child in our BOCES units were $4,200. Approved tuition rates in private nonresidential schools ranged from $300 to $8,000, with a median institutional rate of approximately $4,500. Comparable tuition rates for private residential facilities ranged from $1,950 to $9,000, with a median of approximately $6,000. Approved maintenance rates for private residential schools were equally high, ranging from $1,500 to $9,500, with a median of approximately $7,000.

More than 5,300 children referred through the courts and social service agencies as neglected, dependent, or delinquent, are educated and maintained by a network of voluntary child-care agencies. Many are handicapped and receive special services. A combination of educational and social service funds support these programs, with tuition charges ranging from $2,500 to over $11,000, and charges for maintenance routinely exceeding $10,000 per child and ranging up to $23,000.

The points I wish to emphasize are not simply that New York State has already made a very substantial commitment to these children but also that more remains to be done. Last year Governor Carey signed into law chapter 853 of the laws of 1976 which substantially removed responsibility for the education of handicapped children from an advocacy proceeding within the court system and placed it directly in the State's educational system. We now have in place an effective excess cost program for the education of the most severely handicapped children in private facilities, and careful consideration is being given to alternative forms of State excess cost support within the public sector.

As this committee examines the impact of the Education for All Handicapped Children Act, there are several widely shared reactions at the State level which bear repetition.

1. The Federal funding commitment is not commensurate with the required State guarantee of service. In order to participate under Public Law 94–142, States are required to identify, locate, and evaluate all those handicapped children who are in need of special education and related services; to develop detailed timetables for establishing a goal of providing full educational opportunity to all handicapped children; to develop detailed individualized education programs, involving teachers, parents and children; to maintain, review, and revise detailed records of all handicapped children; to supervise and administer the education programs of all State agencies which deal with handicapped children; and to draft and submit detailed plans consisting of programs and procedures for personnel development.

In addition, to establish eligibility for funds under Public Law 94–142, a detailed set of procedural safeguards must be established which would require notice whenever a change in program is initiated; provide an opportunity for formal hearings; require the employment of a large number of hearing officers; require transcripts of hearings and enable parents to bring actions in a U.S. district court.

We have asked the State Education Commissioner to estimate the additional expenditures required to implement the provisions of Public Law 94–142, and he has identified a potential increased cost of $69 million. A copy of Commissioner Nyquist's letter is attached as appendix A. This substantial sum is more than four times the additional Federal aid anticipated. Even if the costs of the required due process procedures, independent educational evaluations, and litigation were to be substantially less than those forecast by the Commissioner, they will clearly present major fiscal hurdles for a State whose financial difficulties at the municipal and school district levels are already well known to the members of the committee.

These incremental costs will be even greater for those States which have not already made an investment comparable to that of New York.

The lack of a Federal guarantee to appropriate additional funds commensurate with the increasing commitment outlined in the authorizing legislation is deeply troubling. Our States must guarantee the provision of detailed services under a very tight calendar. Acceptance of a State plan by the U.S. Office of Education should constitute a contract on the part of the Federal Government to provide its share of the anticipated funding.

Many States have suggested that Public Law 94–142 should either be amended to reduce substantially the administrative costs associated with its implementation, or to delay the effective date of the States' required guarantee of compliance until such time as the Federal Government actually appropriates the 40 percent of average national spending per pupil called for by 1982. Such changes would in no way diminish the obligations of States to handicapped children according to State law or to section 504 of the Federal Rehabilitation Act of 1973.

2. The differential costs of educating handicapped children according to their State of residence and the severity of their handicap. Per pupil expenditures on behalf of handicapped children vary widely from State to State. Some consideration should be given in further refinements of this statute to State-by-State spending variations, as well as to the differential costs of particular handicapping conditions. Congress should consider allocating moneys to States for these special children based on either the national average or the State average educational expenditure, whichever is greater. Thus, States below the national average would be adequately funded, and States above the national average would not be penalized for their greater commitment; the Federal Government must reward success as well as failure, good faith as well as inattention.

3. Federal determination of State agency relationships. The State education agency is required under Public Law 94–142 to assure that the requirements of the act are being carried out, even to the extent of providing certain services directly in the event of a failure to comply by a local school district or other State agency. The language of the statute clearly conflicts with the constitutions and statutes of a number of States, including New York. It contributes to the widespread feeling that the Congress wishes to assume direct operational responsibilities for the educational systems of the States, while accepting only a small fraction of the cost.

The enactment of detailed due process procedures, rather than a simple setting forth of the substantive requirements to be met under a variety of State constitutional and statutory provisions, is a further example of how the Federal statute can run roughshod over previously existing State requirements. We have attempted in New York to recognize the traditional and vitally important role of local boards of education in this process—a policy which may be jeopardized under several provisions of this statute. For example, New York law requires the report of the impartial hearing officer appointed to review the evaluation and placement recommendations of the local committee on the handicapped to be submitted to the local board of education for its action. The Federal statute has raised questions concerning the appropriateness of their step and has led some individuals to assert that local boards have no role in this process. Such conflicts should be avoided.

4. Child count requirements. The existing statute requires two child counts each year, on October 1 and February 1, with the average of the two counts then used to allocate funds to States. As we well know from the operation of State basic support programs, the use of any two distinct days for counting purposes is likely to produce substantial aberrations in a school census, whether for regular or special pupils. I would strongly urge the committee to substitute a standard for average daily membership which would not only reflect the workload generated by those children receiving intermittent services but also by those who may have been in the process of screening, evaluation and placement at the time of the census.

In summary, Mr. Chairman, I would like to thank the committee for providing this opportunity for the position of the Education Commission of the States to be placed on the record. A detailed policy statement adopted by ECS at its annual meeting is also attached to my testimony. We have worked closely in this regard with the National Governors' Conference, and I believe you received a statement from Lieutenant Governor O'Neill of Massachusetts in this regard yesterday.

We are united in our determination to meet successfully the objectives set forth in the Education for All Handicapped Children Act. With your increased and dependable financial support, as well as some greater flexibility in the administration of the act's provisions, we can insure that these children who have suffered so much will receive the educational services that will enable them to have full equality of opportunity.

Thank you very much, Mr. Chairman.

Senator RANDOLPH. Thank you, Mr. Dullea. It is our understanding that the Education Commission of the States, the organization for which you speak, has now, in a sense, changed its position with regard to the, let us say, supervisory role of the State education agency. I think we have a letter that was written to our subcommittee in 1975 which supports the State education agency provision. I am not saying there should not be a change, but would you give us the reason for the change in position.

Mr. DULLEA. I believe it is a reflection, Mr. Chairman, of the different statutory and constitutional requirements of different States. In New York State, for example, we have absolutely no problem with the State education agency having a supervisory role. That is fine. It is in line with our existing State statutes. It is our understanding, Mr. Chairman, that in several other States——

Senator RANDOLPH. What are those States?

Mr. DULLEA. I believe Texas and Florida are examples—I can get that detailed listing for you, Mr. Chairman. In the discussions in the ECS meeting last week, representatives from several other States indicated that in existing State statutes they had alternative appeal procedures to other statutory established bodies. What was required in the Federal statute, in their judgment, was not specificity of the State education agency, per se, but that there be an established body to which appeals could be forwarded from local education officials for an impartial review, and that this requirement should be provided in its Federal statute while the delineation of the State education agency itself would not necessarily be required.

Senator RANDOLPH. Then it was not a problem within New York?

Mr. DULLEA. No, sir.

Senator RANDOLPH. And the change in position was not because of the situation in New York but in other States?

Mr. DULLEA. That is correct, sir.

Senator RANDOLPH. We appreciate your clarifying that matter. Your comment today is helpful. We thank you very much.

Mr. DULLEA. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Dullea with accompanying material follows:]

TESTIMONY OF

HENRIK N. DULLEA
ASSISTANT SECRETARY TO THE GOVERNOR
FOR EDUCATION AND THE ARTS

BEFORE THE

SENATE SUBCOMMITTEE ON THE HANDICAPPED

JUNE 22, 1977
WASHINGTON, D. C.

Mr. Chairman, Members of the Committee.

My name is Henrik N. Dullea, and I am Assistant Secretary to the Governor for Education and the Arts in the State of New York. Governor Hugh Carey is deeply committed to the education and welfare of children with handicapping conditions. As you know, Governor Carey was the author, while a Congressman, of the Handicapped Child Benefit and Education Act, and he has asked me to share his concern with you today.

I am appearing today on behalf of the Education Commission of the States, a unique interstate compact which brings together governors, state legislators, leaders of the education community and observers from the federal government for in-depth discussions of common issues and problems. The Commission has just completed its 11th Annual Meeting, held in New York City, and Governor Carey was honored to deliver the keynote address.

The Education for All Handicapped Children Act is landmark legislation which offers the promise of equal educational opportunity to all children whose special needs have been by-passed by our educational system for many generations. The Education Commission of the States and my own State stand ready to take the steps necessary to insure that the goal enunciated by the Congress of guaranteeing to handicapped children the availability of "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs" shall be reached as rapidly as is humanly and fiscally possible.

THE PROVISION OF ADDITIONAL FEDERAL FUNDS TO ASSIST STATES AND LOCALITIES IN MEETING THIS OBLIGATION IS A SIGNIFICANT AND WELCOME STEP, BUT MAJOR QUESTIONS REMAIN CONCERNING BOTH THE SUFFICIENCY OF THESE FUNDS AND THE DETAILED PROCEDURAL REQUIREMENTS SET FORTH BY THE CONGRESS AS A PRECONDITION FOR THEIR RECEIPT.

LET ME GIVE YOU A FEW SPECIFIC EXAMPLES OF THE CONCERNS WHICH WE HAVE IN NEW YORK STATE. OTHER STATES WILL OBVIOUSLY HAVE SOMEWHAT DIFFERENT PERSPECTIVES, BUT I BELIEVE IT IS IMPORTANT FOR THE COMMITTEE TO BE FAMILIAR WITH THE POSITION TAKEN BY STATES SUCH AS NEW YORK WHICH HAVE ALREADY DEMONSTRATED A SIGNIFICANT COMMITMENT TO THE EDUCATION OF THE PHYSICALLY, MENTALLY AND EMOTIONALLY HANDICAPPED.

PRESENT EXPENDITURES FOR THE EDUCATION OF HANDICAPPED CHILDREN IN NEW YORK ARE IN EXCESS OF $690 MILLION. THE ATTACHED TABLES 1 AND 2 PROVIDE DETAILS OF THIS ESTIMATE FOR THE 1977-78 SCHOOL YEAR. OF THIS AMOUNT, ONLY $32 MILLION OR 4.6% IS ESTIMATED TO BE RECEIVED FROM THE FEDERAL GOVERNMENT, PRIMARILY FROM ESEA - TITLE I (HANDICAPPED) AND P.L. 94-142.

THE NEW YORK STATE EDUCATION DEPARTMENT NOW ESTIMATES THAT 243,336 HANDICAPPED CHILDREN IN OUR STATE BETWEEN THE AGES OF 3 AND 21 ARE RECEIVING AN EDUCATION WHICH MEETS ALL OF THEIR EDUCATIONAL NEEDS. AN ADDITIONAL 136,465 CHILDREN ARE ESTIMATED AS NOT PRESENTLY RECEIVING AN EDUCATION -- PRIMARILY THE 108,000

CHILDREN IN THE 3 THROUGH 5 AND 18 THROUGH 21 AGE CATEGORIES NOT NOW GUARANTEED AN EDUCATIONAL EXPERIENCE UNDER STATE LAW. OF THOSE CHILDREN WITHIN THE TRADITIONAL SCHOOL AGE GROUP, THE LARGEST CATEGORY OF "UNSERVED" CHILDREN IS THAT OF STUDENTS WITH SPECIFIC LEARNING DISABILITIES.

NEW YORK STATE PROVIDES EDUCATIONAL SERVICES TO CHILDREN WITH HANDICAPPING CONDITIONS THROUGH A WIDE VARIETY OF INSTITUTIONS: REGULAR SCHOOLS; INTERMEDIATE SCHOOLS OR, AS WE CALL THEM IN NEW YORK, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES (BOCES); STATE-OPERATED SCHOOLS FOR THE BLIND AND THE DEAF; STATUTORILY-RECOGNIZED PRIVATE SCHOOLS FOR THE HANDICAPPED WHOSE PLACEMENTS ARE MADE BY THE COMMISSIONER OF EDUCATION; PRIVATE RESIDENTIAL AND NON-RESIDENTIAL SCHOOLS BOTH WITHIN AND OUTSIDE THE STATE; AND OTHER STATE AGENCIES WITH RESIDENTIAL FACILITIES FOR THE CARE AND TREATMENT OF CHILDREN WITH HANDICAPPING CONDITIONS. APPROXIMATELY 8,800 OR 3.2% OF THE 243,000 CHILDREN WHOSE EDUCATIONAL NEEDS ARE NOW BEING MET RECEIVE THESE SERVICES IN PRIVATE INSTITUTIONS, WITH APPROXIMATELY 700 OR 0.3% OF THE TOTAL IN RESIDENTIAL FACILITIES.

AS THE MEMBERS OF THIS COMMITTEE CAN WELL APPRECIATE, THE COST OF PROVIDING AN APPROPRIATE EDUCATIONAL EXPERIENCE TO EVERY HANDICAPPED CHILD IS QUITE SUBSTANTIAL AND VARIES GREATLY ACCORDING TO THE PARTICULAR NEEDS OF THE CHILD. WHILE WE DO NOT

YET HAVE A FULLY DEVELOPED UNIT COST METHODOLOGY FOR ALL TYPES OF HANDICAPPING CONDITIONS, SOME INDICATION OF THE MAGNITUDE OF THESE EXPENDITURES CAN BE ASCERTAINED FROM THE AVAILABLE DATA. IN 1975-76, THE ESTIMATED AVERAGE CURRENT EXPENDITURE PER HANDICAPPED CHILD IN PUBLIC SCHOOLS WAS $4,400, AND EXPENDITURES PER HANDICAPPED CHILD IN OUR BOCES UNITS WERE $4,200. APPROVED TUITION RATES IN PRIVATE NON-RESIDENTIAL SCHOOLS RANGED FROM $300 TO $8,000, WITH A MEDIAN INSTITUTIONAL RATE OF APPROXIMATELY $4,500. COMPARABLE TUITION RATES FOR PRIVATE RESIDENTIAL FACILITIES RANGED FROM $1,950 TO $9,000, WITH A MEDIAN OF APPROXIMATELY $6,000. APPROVED MAINTENANCE RATES FOR PRIVATE RESIDENTIAL SCHOOLS WERE EQUALLY HIGH, RANGING FROM $1,500 TO $9,500, WITH A MEDIAN OF APPROXIMATELY $7,000.

MORE THAN 5,300 CHILDREN REFERRED THROUGH THE COURTS AND SOCIAL SERVICE AGENCIES AS NEGLECTED, DEPENDENT OR DELINQUENT, ARE EDUCATED AND MAINTAINED BY A NETWORK OF VOLUNTARY CHILD-CARE AGENCIES. MANY ARE HANDICAPPED AND RECEIVE SPECIAL SERVICES. A COMBINATION OF EDUCATIONAL AND SOCIAL SERVICE FUNDS SUPPORT THESE PROGRAMS, WITH TUITION CHARGES RANGING FROM $2,500 TO OVER $11,000, AND CHARGES FOR MAINTENANCE ROUTINELY EXCEEDING $10,000 PER CHILD AND RANGING UP TO $23,000.

THE POINTS I WISH TO EMPHASIZE ARE NOT SIMPLY THAT NEW YORK STATE HAS ALREADY MADE A VERY SUBSTANTIAL COMMITMENT TO THESE CHILDREN BUT ALSO THAT MORE REMAINS TO BE DONE. LAST YEAR GOVERNOR CAREY SIGNED INTO LAW CHAPTER 853 OF THE LAWS OF 1976

WHICH SUBSTANTIALLY REMOVED RESPONSIBILITY FOR THE EDUCATION OF HANDICAPPED CHILDREN FROM AN ADVOCACY PROCEEDING WITHIN THE COURT SYSTEM AND PLACED IT DIRECTLY IN THE STATE'S EDUCATIONAL SYSTEM. WE NOW HAVE IN PLACE AN EFFECTIVE EXCESS COST PROGRAM FOR THE EDUCATION OF THE MOST SEVERELY HANDICAPPED CHILDREN IN PRIVATE FACILITIES, AND CAREFUL CONSIDERATION IS BEING GIVEN TO ALTERNATIVE FORMS OF STATE EXCESS COST SUPPORT WITHIN THE PUBLIC SECTOR.

STATE CONCERNS

AS THIS COMMITTEE EXAMINES THE IMPACT OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, THERE ARE SEVERAL WIDELY-SHARED REACTIONS AT THE STATE LEVEL WHICH BEAR REPETITION.

1. THE FEDERAL FUNDING COMMITMENT IS NOT COMMENSURATE WITH THE REQUIRED STATE GUARANTEE OF SERVICE

IN ORDER TO PARTICIPATE UNDER P.L. 94-142, STATES ARE REQUIRED TO IDENTIFY, LOCATE AND EVALUATE ALL THOSE HANDICAPPED CHILDREN WHO ARE IN NEED OF SPECIAL EDUCATION AND RELATED SERVICES; TO DEVELOP DETAILED TIMETABLES FOR ESTABLISHING A GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITY TO ALL HANDICAPPED CHILDREN; TO DEVELOP DETAILED INDIVIDUALIZED EDUCATION PROGRAMS, INVOLVING TEACHERS, PARENTS, AND CHILDREN; TO MAINTAIN, REVIEW, AND REVISE DETAILED RECORDS OF ALL HANDICAPPED CHILDREN; TO SUPERVISE AND ADMINISTER THE EDUCATION PROGRAMS OF ALL STATE AGENCIES WHICH DEAL WITH HANDICAPPED CHILDREN; AND TO DRAFT AND SUBMIT DETAILED PLANS CONSISTING OF PROGRAMS AND PROCEDURES FOR PERSONNEL DEVELOPMENT.

In addition, to establish eligibility for funds under P.L. 94-142, a detailed set of procedural safeguards must be established which would require notice whenever a change in program is initiated; provide an opportunity for formal hearings; require the employment of a large number of hearing officers; require transcripts of hearings and enable parents to bring actions in a U.S. District Court.

We have asked the State Education Commissioner to estimate the additional expenditures required to implement the provisions of P.L. 94-142, and he has identified a potential increased cost of $69.0 million. (A copy of Commissioner Nyquist's letter is attached as Appendix A). This substantial sum is more than four times the additional Federal aid anticipated. Even if the costs of the required due process procedures, independent educational evaluations and litigation were to be substantially less than those forecast by the Commissioner, they will clearly present major fiscal hurdles for a State whose financial difficulties at the municipal and school district levels are already well known to the members of the Committee.

These incremental costs will be even greater for those states which have not already made an investment comparable to that of New York.

THE LACK OF A FEDERAL GUARANTEE TO APPROPRIATE ADDITIONAL FUNDS COMMENSURATE WITH THE INCREASING COMMITMENT OUTLINED IN THE AUTHORIZING LEGISLATION IS DEEPLY TROUBLING. OUR STATES MUST GUARANTEE THE PROVISION OF DETAILED SERVICES UNDER A VERY TIGHT CALENDAR. ACCEPTANCE OF A STATE PLAN BY THE UNITED STATES OFFICE OF EDUCATION SHOULD CONSTITUTE A CONTRACT ON THE PART OF THE FEDERAL GOVERNMENT TO PROVIDE ITS SHARE OF THE ANTICIPATED FUNDING.

MANY STATES HAVE SUGGESTED THAT P.L. 94-142 SHOULD EITHER BE AMENDED TO REDUCE SUBSTANTIALLY THE ADMINISTRATIVE COSTS ASSOCIATED WITH ITS IMPLEMENTATION, OR TO DELAY THE EFFECTIVE DATE OF THE STATES' REQUIRED GUARANTEE OF COMPLIANCE UNTIL SUCH TIME AS THE FEDERAL GOVERNMENT ACTUALLY APPROPRIATES THE 40% OF AVERAGE NATIONAL SPENDING PER PUPIL CALLED FOR BY 1982. SUCH CHANGES WOULD IN NO WAY DIMINISH THE OBLIGATIONS OF STATES TO HANDICAPPED CHILDREN ACCORDING TO STATE LAW OR TO SECTION 504 OF THE FEDERAL REHABILITATION ACT OF 1973.

2. THE DIFFERENTIAL COSTS OF EDUCATING HANDICAPPED CHILDREN ACCORDING TO THEIR STATE OF RESIDENCE AND THE SEVERITY OF THEIR HANDICAP.

PER PUPIL EXPENDITURES ON BEHALF OF HANDICAPPED CHILDREN VARY WIDELY FROM STATE TO STATE. SOME CONSIDERATION SHOULD BE GIVEN IN FURTHER REFINEMENTS OF THIS STATUTE TO STATE-BY-STATE SPENDING VARIATIONS, AS WELL AS TO THE DIFFERENTIAL COSTS OF PARTICULAR HANDICAPPING CONDITIONS. CONGRESS SHOULD CONSIDER

ALLOCATING MONEYS TO STATES FOR THESE SPECIAL CHILDREN BASED ON EITHER THE NATIONAL AVERAGE OR THE STATE AVERAGE EDUCATIONAL EXPENDITURE, WHICHEVER IS GREATER. THUS, STATES BELOW THE NATIONAL AVERAGE WOULD BE ADEQUATELY FUNDED, AND STATES ABOVE THE NATIONAL AVERAGE WOULD NOT BE PENALIZED FOR THEIR GREATER COMMITMENT. THE FEDERAL GOVERNMENT MUST REWARD SUCCESS AS WELL AS FAILURE, GOOD FAITH AS WELL AS INATTENTION.

3. FEDERAL DETERMINATION OF STATE AGENCY RELATIONSHIPS.

THE STATE EDUCATION AGENCY IS REQUIRED UNDER P.L. 94-142 TO ASSURE THAT THE REQUIREMENTS OF THE ACT ARE BEING CARRIED OUT, EVEN TO THE EXTENT OF PROVIDING CERTAIN SERVICES DIRECTLY IN THE EVENT OF A FAILURE TO COMPLY BY A LOCAL SCHOOL DISTRICT OR OTHER STATE AGENCY. THE LANGUAGE OF THE STATUTE CLEARLY CONFLICTS WITH THE CONSTITUTIONS AND STATUTES OF A NUMBER OF STATES, INCLUDING NEW YORK. IT CONTRIBUTES TO THE WIDESPREAD FEELING THAT THE CONGRESS WISHES TO ASSUME DIRECT OPERATIONAL RESPONSIBILITIES FOR THE EDUCATIONAL SYSTEMS OF THE STATES, WHILE ACCEPTING ONLY A SMALL FRACTION OF THE COST.

THE ENACTMENT OF DETAILED DUE PROCESS PROCEDURES, RATHER THAN A SIMPLE SETTING FORTH OF THE SUBSTANTIVE REQUIREMENTS TO BE MET UNDER A VARIETY OF STATE CONSTITUTIONAL AND STATUTORY PROVISIONS, IS A FURTHER EXAMPLE OF HOW THE FEDERAL STATUTE CAN RUN ROUGHSHOD OVER PREVIOUSLY EXISTING STATE REQUIREMENTS.

We have attempted in New York to recognize the traditional and vitally important role of local boards of education in this process -- a policy which may be jeopardized under several provisions of this statute. For example, we have required the report of the impartial hearing officer appointed to review the evaluation and placement recommendations of the local committee on the handicapped to be submitted to the local board of education for its action. The federal statute has raised questions concerning the appropriateness of this step and has led some individuals to assert that local boards have no role in this process. Such conflicts should be avoided.

4. Child Count Requirements.

The existing statute requires two child counts each year, on October 1 and February 1, with the average of the two counts then used to allocate funds to states. As we well know from the operation of state basic support programs, the use of any two distinct days for counting purposes is likely to produce substantial aberrations in a school census, whether for regular or special pupils. I would strongly urge the Committee to substitute a standard for average daily membership which would not only reflect the workload generated by those children receiving intermittent services but also by those who may have been in the process of screening, evaluation and placement at the time of the census.

CONCLUSION

In summary, Mr. Chairman, I would like to thank the Committee for providing this opportunity for the position of the Education Commission of the States to be placed on the record. A detailed policy statement adopted by ECS at its Annual Meeting is also attached to my testimony. We have worked closely in this regard with the National Governor's Conference, and I believe you will be receiving a statement from Lieutenant Governor O'Neill of Massachusetts in this regard tomorrow.

We are united in our determination to meet successfully the objectives set forth in The Education for All Handicapped Children Act. With your increased and dependable financial support, as well as some greater flexibility in the administration of the Act's provisions, we can insure that these children who have suffered so much will receive the educational services that will enable them to have full equality of opportunity.

Thank you very much.

TABLE I

ESTIMATED STATE, LOCAL AND FEDERAL EDUCATION EXPENDITURES FOR CHILDREN WITH HANDICAPPING CONDITIONS

	Number Served	State	Local	SUBTOTAL	Federal	TOTAL
		(IN MILLIONS)				
STATE EDUCATION DEPARTMENT						
Additionally Aidable Children	120,000	$253.0	$194.0	$447.0	$15.6 (94-142) 8.0 (89-313) 1.1 (IV-C)	
Speech Impaired	65,000	47.0	83.0	130.0		
Learning Disabled	33,000	30.0	43.0	73.0		
SUBTOTAL	218,000	330.0	320.0	650.0	24.7	674.7
OTHER STATE AGENCIES						
Department of Mental Hygiene	5,700	8.0	-	8.0	3.9	11.9
Department of Social Services	5,300	37.0	-	37.0		
Division for Youth	1,371	1.3	-	1.3	1.4	2.7
Department of Corrections	N.A.	N.A.	-	N.A.	.8	.8
Office of Drug Abuse Services	N.A.	N.A.	-	N.A.	1.3	1.3
Department of Health	N.A.	.2	-	.2	.1	.3
TOTAL	230,371	$368.5	$320.0	$696.5	$32.2	$691.7

TABLE II

SUMMARY OF PROGRAMS ADMINISTERED BY THE STATE EDUCATION DEPARTMENT FOR CHILDREN WITH HANDICAPPING CONDITIONS

1977-78 School Year
(Thousands)

Program	State Purposes	Local Assistance		Federal Funds	Total
		Regular	First Instance		
Double Weighted State Aid		$ 67,000[b]			$ 67,000
Special Services Aid		52,000			52,000
BOCES Aid		76,000			76,000
Lottery Distribution:					
General Formula[a]					
Private Blind & Deaf Schools			$ 28		28
Court Orders: Handicapped		5,550[c]			5,550
Contracts: Multi-handicapped		21,000			21,000
Excess Cost: Private Schools		5,600			5,600
Private Schools: Blind & Deaf		21,945			21,945
State Schools: Blind & Deaf	$ 3,233			$ 330	3,563
Institutional School Districts		3,200			3,200
ESEA Title I (P.L. 89-313)				7,700	7,700
Education of the Handicapped Act (94-142)				15,000	15,000
Office of Children With Handicapping Conditions	639			600	1,239
ESEA Title IV C				1,166	1,166
Transportation Aid		N.A.			N.A.
5-Year Mental Retardation Plan		1,050			1,050
TOTAL	$ 3,872	$253,345	$ 28	$24,796	$282,013

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[a] Some of this funding may also be used for pupils with Special Educational Needs. This amount will not be known until expenditure patterns are established by school districts.
[b] Includes both regular state aid, and the additional 1.0 weighting.
[c] An equal amount is provided by counties under this program.

Appendix A

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
OFFICE OF THE PRESIDENT OF THE UNIVERSITY
AND COMMISSIONER OF EDUCATION
ALBANY, NEW YORK 12234

Monday
May 9
19 77

Mr. Henrik Dullea
Assistant Secretary to the Governor
for Education and the Arts
State Capitol, Room 245
Albany, New York

Dear Hank,

In reply to your letter of April 20 concerning our effort to convince Congress to reconsider some especially troublesome provisions of P.L. 94-142, the following are some estimated data concerning costs:

1. Medical and Health Services. Since most of these children already receive medical and health services, only the children receiving more intensive care would add to the cost. Consultation services for 20,000 children = 100 full time doctors = $3,500,000.

2. In-Service Training. 10,000 teachers (approximately $100 per teacher) = $1,000,000.

3. Certification. New requirements for personnel developed through committees. Operation of three major committees of 10 people each, meeting four times at $1,000 per meeting. 10 x 4 = 40 x 3 = 120 x $1,000 = $120,000

4. Due Process Procedures. This is most difficult to estimate. The number is likely to increase as more parents become more familiar with the procedures. 5% of 200,000 cases = 10,000 hearings @ 3 days each @ $1,000 per day = $30,000,000.

5. Transportation in and around school buildings. Would be expected to be a function of staffing.

6. Inventory of facilities, personnel and services. Each district must conduct inventory. Each district, 2 days' time x 736 districts = 1,472 days at $100/day = $147,200.

7. Independent Educational Evaluations. 200,000 children x two hours each = 50,000 days x 7.5 staff members = 375,000 days x $75 per day = $28,125,000.

8. Monitoring LEA's for Compliance. 736 districts x 5 days; 736 x 5 = 3,680 days @ $100/day = $368,000.

9. Litigation. 10,000 hearings - 500 appeals @ $5,000 = $2,500,000.

10. Other Administrative Costs. 5% of the above = $3,288,010.

11. Total (Full excess cost?) = $69,048,210.

In addition to the detailed cost information which you requested, you asked for a statement regarding specific legal, administrative, or program conditions which would constitute major obstacles to the implementation of P.L. 94-142.

One major obstacle which we have in New YOrk State is the conflict in law related to the jurisdiction of the Commissioner of Education over the educational programs offered to handicapped children. P.L. 94-142 requires that the Commissioner of Education have supervisory responsibility over all educational programs offered to handicapped children in the State. Yet, as you know, State law placed the responsibility for the educational programs offered by the various State agencies, such as the Department of Mental Hygiene, under the Commissioner of the respective agency. This legal matter must be resolved before the administrative problems relating to supervision of the free appropriate public educational programs offered handicapped children, regardless of placement, can be addressed.

The federal statute indicates that the impartial hearing officer's decision is to be final. Present State statute, Chapter 853, indicates that the impartial hearing officer makes a recommendation to the Board of Education and that this recommendation may be appealable to the Commissioner of Education after the Board of Education has acted. There is a conflict in this matter which would need to be resolved.

The federal statute allows for related services to be provided to handicapped children needing such support services. These services would be provided by the public school district as part of the individualized education plan. Included would be occupational and physical therapy, services which are presently provided to many handicapped children from other sources such as Medicaid. This matter needs to be dealt with since it would appear that the public school would be assuming costs which more appropriately, and presently, are being provided from other sources.

The federal statute provides for personnel development but when read in relation to the proposed federal regulations, the responsibilities have been greatly expanded to include such activities as inservice education for regular and special education teachers, and all other personnel relating to the handicapped child. Such personnel as physical therapists and recreational therapists are included in the personnel to be trained. We believe that this requirement in the law as expanded by the proposed federal regulations, does create an increased cost burden as well as a major obstacle to implementing on a timely basis, P.L. 94-142.

The federal statute also includes populations which are presently served within New York State but are not provided with categorical State aid for program support. These populations include the learning disabled child and the child with a minor speech impairment. Including these two large-incidence populations in the eligible categories of handicapped children imposes not only cost considerations but also procedural guarantees and other rights afforded handicapped children, which will result in increased administrative problems as well as cost problems for public school districts.

The independent education evaluation is to be provided at no cost to the parent, according to P.L. 94-142. If the cost is to be at public expense, the school district will have to assume another mandated expense without adequate financial reimbursement.

Faithfully yours,

Ewald B. Nyquist

Adopted at ECS Annual
Meeting, June 16, 1977

EDUCATION COMMISSION OF THE STATES

POLICY POSITION FOR EDUCATION OF HANDICAPPED CHILDREN

In resolutions formally adopted in 1971, 1972, 1973 and 1974, the Education Commission of the States (ECS) has expressed strong support for state and federal policies aimed at meeting the educational needs of handicapped children. In 1972, the Commission endorsed the goal of providing "appropriate formal learning experiences for all handicapped children" and stated further that:

> "(1) Each handicapped child in the United States should participate in educational experiences including early childhood experiences which will enable him to attain full potential of his talents;
>
> "(2) Each of the states and territories should proceed in an urgent and comprehensive manner to achieve the above goal through implementation of a full and adequate program of special education."

In 1973 ECS resolved:

> "that every physically, mentally or medically handicapped person has certain fundamental rights, derived from the human condition; and that these rights include education, employment and housing."

In 1974, the Commission resolved:

> "...that the provision of adequate educational services to handicapped children should be an integral part of the educational systems of the states" and expressed support for state and federal legislation "to achieve these goals through the recognition of and provision for the cost of providing adequate special education and related services."

All states with only one or two exceptions now mandate special education for handicapped children and the policies of a number of states were based directly on materials provided by ECS.

ECS reaffirms its commitment to the right of all handicapped children to access to public educational opportunities (preschool through adult level) appropriate to each child's needs and capabilities. ECS further urges all states and territories which have not already done so, to establish comprehensive state special education programs designed to guarantee this right to educational opportunity for all handicapped children. Finally, ECS reaffirms its commitment to assist states in developing policies and programs to respond fully to the educational needs of handicapped children.

The Education for All Handicapped Children Act of 1975 (P.L. 94-142) is intended to assure that all handicapped children have available to them a "free appropriate public education," a term defined in federal law as "...special education and related services...provided at public expense, under public supervision and direction, and without charge.... [including] an appropriate preschool, elementary or secondary school education and...provided in conformity with the individualized education program...."

P.L. 94-142 requires, as a condition for eligibility for federal assistance, that a state must demonstrate to the U.S. Commissioner of Education that "the state has in effect a policy that assures all handicapped children the right to a free appropriate public education." The state must further develop a plan setting forth in detail the policies and procedures undertaken or to be undertaken in order to assure that "...a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the state not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the state not later than September 1, 1980. "In addition, the state must demonstrate that other federally-mandated policies and procedures are in effect.

In simple terms, to be eligible for any federal assistance a state must make a full legal and financial commitment to the policy and procedural specifications of P.L. 94-142. In this and several other respects, P.L. 94-142 is a dramatic departure from previous federal education assistance programs. Most such programs identify a problem and then provide financial assistance to schools, institutions of higher education, individuals or states to help in addressing the problem. Conditions are established to assure or obtain non-federal efforts to address the problem (matching, maintenance of effort, antisupplanting, etc.). There is no obligation placed on the recipient of the federal assistance to undertake the federal program (with accompanying policies and procedures) substantially beyond the commitments related directly to the federal assistance, or beyond the point at which federal assistance ceases.

In contrast, P.L. 94-142 requires states desiring to receive federal assistance under the Act to make legal and financial commitments beyond those previously required by state law. These commitments are binding on the states regardless of the extent of the federal assistance provided to meet these obligations.

The goals of P.L. 94-142 and many of the programmatic and procedural requirements of the law are consistent with the formal policy statements of ECS and the policy positions which ECS urged states to adopt even prior to the enactment of P.L. 94-142. While as mentioned above all but one or two states have mandatory special education laws, the characteristics of these programs differ substantially among the states and especially from P.L. 94-142. Differences relate to:
- Eligibility by age groups and handicapping condition;
- Details of due process requirements;
- Programmatic requirements such as "least restrictive environment" and individualized education programs;
- Services included as compared to "related services" as defined in P.L. 94-142;
- State agency responsibility for special education.

While in some states there remain a number of handicapped children who are not receiving some special education and related services, the principal task facing most states is to provide full services to each child appropriate to his or her needs.

To assure that the goals of P.L. 94-142 are attained, a number of problems should be corrected through amendments to the statute. The specific concerns and recommendations of ECS follow.

The Federal Contribution to the Costs of Implementation

The federal contribution to the costs of meeting the service and other requirements of P.L. 94-142 is only a fraction of the costs to be borne by states and local education agencies (LEAs) if states decide to participate in this federal program. As indicated above, P.L. 94-142 requires, as a condition of eligibility, that states make a full legal and financial commitment. It is estimated that states and LEAs will have to increase expenditures for special education by $3 billion by 1978/79 from the current level of $5 billion to meet the requirements of P.L. 94-142. If they choose to receive P.L. 94-142 funds, states have no choice but to raise or reallocate tax resources to meet the mandates of the federal law. To pledge to the U.S. Commissioner of Education that the obligations have been met when in fact they have not would have serious legal and financial repercussions for a state.

In contrast to the extensive immediate obligations placed on states by P.L. 94-142, the law provides for federal assistance to states to be phased in over a five-year period. In 1978/79, the estimated authorization for appropriations is $675 million based on 10 percent of the estimated national average per pupil expenditures for public education multiplied by the estimated number of children counted as served. This represents only about 20 percent of the $3 to $4 billion in additional costs to be borne by states. Furthermore, there is no assurance that Congress will appropriate the full $675 million since the federal contribution is not guaranteed as an entitlement and must therefore be subject to the competition for funds in the budget and appropriations process.

The authorized federal contribution increases to 20 percent of the national average per pupil expenditures for 1979/80, 30 percent for 1980/81, and 40 percent for 1981/82. The federal authorized contribution could reach $3 to $4 billion.

The policy position of ECS is that the federal government should make a financial commitment to P.L. 94-142 commensurate with that required of the states. The following are options to carry out this policy:

(a) Amend P.L. 94-142 to make approval of the state plan (including all assurances from the state) a contractual obligation by the federal government to pay its share of the costs;

(b) Amend P.L. 94-142 to eliminate the phase-in of federal contributions (from 5 percent for fiscal year 1977 to 40 percent for fiscal year 1982), and to authorize 40 percent of the national average per pupil expenditures multiplied by the child count beginning for fiscal year 1978;

(c) As an alternative to (b), amend P.L. 94-142 to provide that a state must make the full legal and financial commitments required in the federal law at such time as the federal contribution reaches 40 percent of the national average per pupil expenditures multiplied by the child count. This would in no way diminish the obligations of states to handicapped children according to state law or to Section 504 of the Federal Rehabilitation Act of 1973.

Within-State Allocation of Funds

P.L. 94-142 provides for allocation of federal funds to local education agencies on the basis of a flat grant per child served without regard to the fiscal capacity of the LEAs or the treatment of LEAs in the state school finance system. The policy position of ECS is that the pass-through of federal funds should be maintained but that the states should be authorized to allocate federal funds to local education agencies in accordance with a uniformly applicable formula, which may be the same as the formula employed by a state for a state special education assistance program.

P.L. 94-142 further requires states to provide assurance that federal funds will not be commingled with state funds or used to supplant state and local funds. The U.S. Commissioner of Education may waive these requirements if it is determined that a state has met the full service requirements of the federal law. The commingling and supplanting restrictions appear to be inconsistent with the fact that, to be eligible for federal assistance in the first instance, the state must guarantee the right to a free appropriate public education to all handicapped children regardless of the extent of federal assistance. The policy position of ECS is that, if the state is to be guarantor of services in return for federal assistance, the state should not be restricted by antisupplanting and anticommingling provisions in the application of federal funds to carry out the purposes of the federal law. Amendments to P.L. 94-142 to reflect this policy would facilitate coordination of P.L. 94-142 with state special education programs, especially in terms of allocation of federal and state funds to LEAs according to the same uniformly applicable formula.

State Agency Supervision

P.L. 94-142 requires that the state education agency (SEA) be responsible for assuring that the requirements of the Act are carried out and that the SEA provide general supervision for programs for education of handicapped children in the state, including programs of any other state or local agency. All programs must meet the standards of the SEA. The intent of this provision is clearly to provide a single point within state government for overall planning, coordination and accountability for education of handicapped children. However, the specific language of the statute conflicts with the constitutions and statutes of a number of states. The policy position of

ECS that federal laws should set forth the substantive objectives to be achieved through federal assistance and should leave the specification of state structure to be determined by the states with respect to education of handicapped children, in accordance with state law. Following from this, the SEA should be assigned responsibility, if so authorized by state law, for statewide planning, coordination, policy development, and establishment of standards for education of handicapped children. However, if these responsibilities are beyond those authorized for the SEA by state law, the state should establish a mechanism, in accordance with state law, for general supervision of all programs for education of handicapped children in the state.

Due Process Procedures

P.L. 94-142 requires that states and local education agencies establish detailed procedural safeguards. Several specific requirements differ from due process requirements in states with fully-developed procedures for handicapped children and their parents. In some cases, the P.L. 94-142 procedures conflict with state law. The policy position of ECS is that federal laws should set forth the substantive requirements to be met (in this case, that the rights of children and their parents be guaranteed procedural safeguards) and should leave to the states the responsibility for establishing the procedures for meeting the requirements within the context of unique state circumstances. The following limited changes in P.L. 94-142 would address the problems faced by states and LEAs:

- Provide that a surrogate for the parents or guardian of a child or that a hearing officer shall not be an employee of the educational unit directly involved in the education of the child (an employee of the SEA or other education agency not directly involved in providing service could be a surrogate or hearing officer);
- Remove the separate authorization for appeals to the state education agency since the authority for such appeals as determined by state law is provided elsewhere in the statute.

Individualized Education Program

P.L. 94-142 requires that there be an individualized educational program developed for each handicapped child. This is an important educational planning tool, which defines the kinds of educational programs and services that each handicapped child needs.

The individualized education plan should be reagrded as just that, an important educational document. To assure its educational value, and mitigate the potential for an adversary relationship between handicapped students and their parents and the teachers and other personnel of the local education agency, the policy position of ECS is that the individual educational program should be defined in the federal law as a planning document rather than a contract for services. P.L. 94-142 should be amended to reflect this policy.

Child Count

P.L. 94-142 requires two child counts each year, one in October and the other in February. The average of the two counts is then used to allocate funds to states. This approach substantially underestimates the number of handicapped children and the range of services required to meet these childrens' needs. Some of the reasons for this are as follows.

- Since October 1 is at the beginning of the school year when children are in the process of being screened, diagnosed and assigned to services, the number of children serviced will be consistently below that for the remainder of the year;
- Counts on specific days of the year (October 1 or February 1, for example) fail to reflect children receiving intermittent service or children who require service at one point and not at another point in the year; and
- one child may require multiple services and therefore to count a child only once fails to reflect to aggregate of services required to meet the child's needs.

The ECS policy position is that the child count should:

- be conducted in a manner which minimizes the administrative burden for schools;
- reflect the average daily membership of handicapped children receiving service; and
- reflect the aggregate of services rendered to handicapped children.

To the maximum extent possible, the child count procedures should not encourage labeling of handicapped children.

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

HENRIK N. DULLEA
ASSISTANT SECRETARY TO THE GOVERNOR
FOR EDUCATION AND THE ARTS

SEP 19 1977

Received
Date 9/24/77
Subcommittee on
The Handicapped

September 14, 1977

Dear Senator Randolph:

This is in response to your letter of July 6 which contained several follow-up questions to my testimony at your hearing on the Education for All Handicapped Children Act of 1975, Public Law 94-142.

Several of the questions which you raised dealt with interstate comparisons or policy positions of the Education Commission of the States. Responses to these matters are being developed by the Commission's staff and will be transmitted to you in the very near future. One of your questions, however, dealt specifically with the situation confronting handicapped children in New York City, related in the testimony presented to the Subcommittee by Jean Frankel of the Public Education Association. It is this particular issue which I would like to address in this letter.

Immediately upon receipt of your inquiry, I brought the subject to the attention of our Commissioner of Education, and we have monitored the situation carefully in the intervening weeks. Since a highly significant case involving this issue has been pending before the Commissioner, I felt it appropriate to wait until now to send you the most recent information available in light of the Commissioner's decision in [redacted].* I am enclosing a copy of the September 2 order of the Commissioner of Education in this regard, and I believe you will find it highly informative.

In her testimony, Ms. Frankel indicated some 15,000 children were on waiting lists for evaluation and reevaluation in New York City. The State Education Department has advised me that this figure may be divided into 7,129 handicapped children needing initial evaluations and 7,785 handicapped children needing reevaluations during the last school year. The children needing reevaluations were mainly mentally retarded children for whom reevaluation every three years is now mandated by the State Education Law. The Department has been assured that all of these children have had their reevaluations completed during the last school year. In regard to the children needing initial evaluations, 2,100 were scheduled to have had their evaluations completed by the end of this summer. This should leave approximately 5,000 children who will need to have their evaluations completed when school reopens. The Commissioner's order in the appeal of [redacted] speaks directly to the evaluation of these children.

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* Name deleted to protect the confidentiality of the student.

The Board of Education has assured the Commissioner that increased staff are being employed to handle this work load and that all new referrals will continue to be processed along with those mentally retarded children who will need to have their triennial evaluation completed next year. In her testimony, Ms. Frankel indicated 7,500 New York City children in special education programs were awaiting State mandated three-year evaluations. New York City expects to reevaluate almost 16,000 mentally retarded children each year in order to meet the State mandate. There are substantial problems associated with an undertaking of this magnitude, and we are closely monitoring the Board's activities to insure that the needless waiting lists are abolished and that children are promptly evaluated and placed.

Several other charges contained in Ms. Frankel's testimony are worthy of attention. One relates to the alleged lack of effort on the part of the New York City Board of Education to mainstream handicapped children. The Commissioner of Education has informed me that mainstreaming efforts are attempted at all levels in the City's educational program, particularly at the secondary level where it is reported that almost 90% of the handicapped children are mainstreamed. At the elementary level, a greater emphasis has been placed on specialized programs, but mainstreaming does take place with resource room and itinerant teacher services. The Board of Education is now developing in the Bronx a particularly interesting pilot program, scheduled to begin this month, which will emphasize the learning center flexible grouping approach. This is essentially a resource room program wherein handicapped children will be served based upon their needs, not by label or disability, and mainstreamed into regular classes to the maximum extent possible. Supervision of the program will be by non-categorical special education personnel. The Board expects to extend this pilot effort to the other boroughs of the City later.

The New York City Board of Education is now in the process of expanding the number of evaluation and placement units from 14 to 25 during the current school year. This will provide for coverage of all 32 community school districts within the City, with the smaller districts combined for evaluation purposes. It is the Board's belief that locating these evaluation units in the same location as the committees on the handicapped will facilitate better communication and processing of placement recommendations, as well as greater effectiveness and efficiency.

I hope this information will further clarify the situation here in New York. Your continuing support, both moral and financial, for the efforts we are making on behalf of handicapped children is greatly appreciated.

Sincerely,

Honorable Jennings Randolph
Chairman, Subcommittee on
the Handicapped
Committee on Human Resources
Senate Office Building
Washington, D.C. 20510

Nº 9499

The University of the State of New York
The State Education Department
Before the Commissioner

IN THE MATTER

of the

Appeal of [redacted], by his mother, [redacted]; [redacted] [redacted], by his mother, [redacted] [redacted]; [redacted], by his mother, [redacted]; [redacted], by his father, [redacted]; [redacted], by his mother, [redacted]; [redacted], by her mother, [redacted]; [redacted]; by his mother, [redacted]; [redacted], by his mother, [redacted]; and [redacted] [redacted], and all other children similarly situated, from action of the Board of Education of the City of New York and Irving Anker, Chancellor of the City School District of the City of New York, with regard to educational services for handicapped students.

Carolyn Heft, Esq....attorney for petitioners

Hon. W. Bernard Richland, Corporation Counsel....attorney for respondents

Joseph Bruno, Esq., of counsel

New York State Psychological Association....Amicus Curiae

On November 26, 1973, the Commissioner of Education issued a decision in this appeal in which he required the respondents to take certain actions to meet their statutory duty to provide an appropriate education for those students in the New York City school system who are handicapped.

In the original decision, the Commissioner found that respondents had failed to meet their obligations in the following specific respects:

1. Undue delays in examinations and diagnostic procedures.

2. Failure to examine and diagnose handicaps.

3. Failure to place handicapped children in suitable programs.

4. Failure to provide available space and facilities for programs.

5. Children placed on home instruction in violation of the purpose of home instruction.

6. Children placed on home instruction who did not receive the required hours of personal instruction in accordance with the regulations of the Commissioner of Education.

7. Handicapped children expelled from public school education for medical reasons when such medical reasons did not preclude benefits from educational settings.

8. Incomplete or conflicting census data on the number of handicapped children residing in New York City.

9. Inadequate means of informing parents of the processes related to special education services, and inadequate plans for parent involvement in effective planning and decision-making regarding their children.

10. Suspensions of handicapped children from classes without adequate notice of provision for alternate educational services.

Respondents were ordered to take the following actions:

FIRST: discontinue use of the medical discharge register.

SECOND: immediately place all students who had been diagnosed as handicapped.

THIRD: provide home instruction solely in accordance with the relevant regulations of the Commissioner of Education.

FOURTH: submit to me lists of all children being given home instruction and the reason for such instruction.

FIFTH: observe the provisions of part 101 of the Regulations of the Commissioner of Education with regard to students who cannot benefit from instruction.

SIXTH: submit a plan for eliminating waiting lists for diagnosis and placement.

SEVENTH: establish a procedure to regionalize evaluation of the handicapped.

EIGHTH: submit a plan for meeting the needs of handicapped pupils at the secondary level.

NINTH: prepare a plan to disseminate information concerning services available for children with handicapping conditions.

Jurisdiction was retained pending a further order in this appeal.

Subsequent to the issuance of the 1973 decision, petitioners alleged that the educational needs of handicapped children in the respondent district continued to go unmet. Both parties submitted data, and oral argument was heard in March, 1974. Further submissions were made and additional argument heard in December, 1975. On June 30, 1977 an interim order was issued requiring respondent to continue to operate its evaluation and placement units during the 1977 summer months.

Petitioners seek the issuance of a further order. They request that respondent be directed to place several specified students in particular programs; that evaluation and placement be provided for certain other students; that certain information be disseminated to parents of the affected students; that pertinent records concerning all of respondents' handicapped children be submitted so that I may review the intended placements for them; that I establish an office in the New York City school district to secure compliance; and that procedures be established to provide notice to all parties of communications between my staff and any of the parties in connection with this matter.

Respondents oppose the granting of any of the relief requested by petitioners and generally deny the assertions made by petitioners. Respondents allege substantial compliance with the prior order and point to progress made, as evidenced by the large number of students served since the issuance of the November 26, 1973 order. The continuing fiscal plight of the City of New York and the attendant constraints imposed upon the City School District are cited as obstacles to further or complete compliance.

Despite the voluminous papers submitted by the parties relative to the question of respondents' compliance with the Commissioner's order, it has been difficult to determine with a desirable degree of certainty the extent to which compliance has been achieved. In order to clarify certain aspects of the measures taken by respondents the Commissioner of Education ordered a survey to be conducted beginning in March, 1976 throughout each of the respondents' community school districts.

I recognize the enormity of the task and the complexities and difficulties involved. However, after carefully considering the results of that survey, the materials submitted in connection with this appeal, various subsequent reports from the New York City school system, and other official records on file with the State Education Department, I find that respondents have not satisfactorily complied with the prior order, although certain measures have been taken and certain progress made.

The first decretal paragraph of the 1973 order required the discontinuance of respondents' medical discharge register. Such a register was abolished as indicated by Special Circular No. 93, 1973-74, dated April 26, 1974 and issued by respondent Chancellor. There is no indication that this device is currently being used.

The second decretal paragraph directed the immediate placement of diagnosed students in appropriate programs in either public school classes or private schools. Respondents argue that their efforts in the past several years have been reasonable and adequate, and they refer to statistics included in a management study undertaken by the respondents, which indicate an enrollment increase of 15,000 students in special education. Respondents, conceding that waiting lists exist, assert that immediate placement is not reasonable or to be expected in view of the need to consider student and parental due process.

The answer of respondents citing partial compliance is not sufficiently responsive to the deficiencies found to exist. Respondents must promptly place all students found to need special education programs. Where the board of education believes public school placement to be appropriate, it must make adequate provision in advance. Where it cannot provide a suitable public school program, it may and must contract with a private institution.

The survey undertaken by State Education Department personnel indicates that much delay has occurred in placement following diagnosis. Respondents admitted in connection with another appeal to the Commissioner that more than 2,100 children were on waiting lists for placement in September, 1976 (Matter of [redacted], [redacted]). Despite this enormous number of currently unserved children with special needs resulting from handicapping conditions, respondents' evaluation and placement units were closed during the 1976 summer months. Additionally the budget prepared by respondents for the 1976-77 school year did not include sufficient funds to provide adequate programs for all students known to require special education. Despite respondent's efforts during the past year to provide appropriate services for previously unserved youngsters with handicapping conditions, it is clear that many such children will remain unserved in school year 1977-78 unless special measures are taken by respondents. To partially alleviate the problem, I will require respondents to continue in private school placement all students currently enrolled in private schools unless the committee on the handicapped specifically finds that such placement is not now suitable for the student involved.

The third decretal paragraph of the 1973 order required that home instruction provided by respondents be solely in accordance with section 200.3, paragraph e of the Regulations of the Commissioner of Education. An affidavit of the director of the respondent's division of special education and pupil personnel services submitted in December, 1975 stated that each child on home instruction does receive the number of hours of instruction mandated by regulation, and the survey conducted by my staff substantially confirms that assertion. Respondents have recently altered their method of providing home instruction so as to substitute media instruction for a portion of the personal, one-to-one teacher-pupil contact. The Commissioner of Education approved that arrangement for the 1976-77 school year only, in accordance with the provisions of section 200.3(e)(3)(iii) of the Regulations of the Commissioner of Education.

In the fourth decretal paragraph of the 1973 order, respondents were directed to provide lists of all children then being provided home instruction and the reasons for such instruction.

Such lists were presented, and a perusal of the subsequent home instruction registers indicates an appreciable decline in the total number of such students, particularly with respect to youngsters who are categorized as emotionally disturbed. Nevertheless, respondents must take further steps to provide more permanent and proper programs for this latter group of students on home instruction.

The fifth decretal paragraph ordered that the provisions of Part 101 of the Regulations of the Commissioner of Education be followed for any students exempted from attendance. Reportedly no students are now exempted as that term is defined by Part 101, and only two were exempted in the 1974-75 school year.

The sixth decretal paragraph of the 1973 order called upon respondents to submit a plan to eliminate waiting lists for diagnosis and placement. The plan submitted called for the establishment of additional evaluation and placement units in respondents' division of special education and pupil personnel services. Although the number of such units was increased and, I note, is to be further increased again, it is clear from respondents' admission in Matter of [redacted], supra, that 3,000 students were awaiting evaluation as of August 1976, and current indications are that approximately 5,000 pupils now await initial evaluation, and that respondents are inadequately discharging their statutory duties. As noted above, respondents' closing of the evaluation and placement units during the 1976 summer months was totally inconsistent with any serious intent to eliminate waiting lists and handle evaluations expeditiously. The survey which the Commissioner ordered revealed that determination by the evaluation and placement unit of a suitable program would routinely take up to three months from the time of initial referral to the unit. It should be unnecessary to point out that respondents should adopt personnel policies which will have the effect of maximizing the productivity of the evaluation and placement units in those times of the school year when referrals are greatest.

Decretal paragraph seven ordered the regionalization of the evaluation procedure. Chapter 853 of the Laws of 1976 enacted a new Article 89 of the Education Law, section 4402(b) of which requires each school district in the State to establish a committee on the handicapped. As a consequence of the enactment of Chapter 853 of the Laws of 1976 and the promulgation of Part 200 of the Regulations of the Commissioner of Education, respondents have now regionalized the process by establishing a local committee on the handicapped for each of the community school districts.

The eighth decretal paragraph of the 1973 order required respondents to undertake a study of the needs of all handicapped students on the secondary level, and submit a plan to meet these needs. Respondent submitted a plan which established a task force to study the needs only of the emotionally disturbed. They more recently prepared a plan for occupational education for fiscal year 1977. However, those actions fall far short of meeting the needs of all handicapped students at the secondary level.

The ninth decretal paragraph ordered respondents to submit a plan by February 1, 1974 for disseminating information concerning available services to all parents and interested persons. As of the latest oral argument, however, respondents were still in the process of printing and planning the distribution of an initial notice to parents.

Petitioners seek an order directing respondents to coordinate the efforts of the various subdivisions within the district in order to systematically approach the task of educating handicapped children. They also ask that respondents be directed to maintain accurate records.

The promulgation of Part 200 of the Regulations of the Commissioner of Education and the enactment of chapter 853 of the Laws of 1976 have extensively revised the method of assessing the needs of and providing suitable education for handicapped children. Committees on the handicapped have been established to review and evaluate all relevant information, including that presented by a parent or guardian, and to recommend appropriate programs and placements of handicapped students. A measure of due process is accorded to parents who may disagree with proposed programs, through a specified appeal process.

The orderly procedures required by these statutory provisions should help to ensure that the needs of handicapped youngsters in the New York City school system are met more expeditiously and more appropriately than has been the case in the past. Apart from these new requirements and procedures, however, respondents must take certain additional steps to the end that the special needs of all handicapped youngsters will be served properly and promptly.

I will not grant petitioners' request that I order evaluations or placements of certain, specifically-named students since such should be attended to by the broader decretal provisions of this order.

IT IS ORDERED that within thirty days after diagnosis or thirty days after the date of this order, whichever date shall later occur, respondents place in suitable programs those students diagnosed as having a handicapping condition; and upon failure to effect such placement, bear the expense of any private placement in a school, approved by the State Education Department for the purpose of contracting with school districts pursuant to the provisions of section 200.9 of the Regulations of the Commissioner, which offers an appropriate program for a child so diagnosed, at the option of the parent or guardian of such student; and

IT IS FURTHER ORDERED that pending my further order, respondents not transfer any handicapped child who is currently attending a private school under contract with the board of education to a program operated by respondents, unless the committee on the handicapped finds that the current placement is no longer appropriate; and

IT IS FURTHER ORDERED that respondents submit by November 1 of each year a list of students receiving home instruction or exempted from instruction, and the reasons for such home instruction or exemption; and

IT IS FURTHER ORDERED that respondents submit a detailed plan, by January 2, 1978, setting forth respondents' proposed course of action to effectively eliminate delays and waiting lists in the diagnosis and placement of children with handicapping conditions, and that respondents include in such plan specific procedures and techniques for handling fluctuations in referrals; and;

IT IS FURTHER ORDERED that respondents submit by January 2, 1978 a comprehensive plan to meet the needs of all handicapped students on the secondary level; and

IT IS FURTHER ORDERED that respondents submit a report by January 2, 1978 of the means used, with sample copies of printed materials, to disseminate information concerning available services to all interested persons and to notify persons in parental relationship to handicapped children as to services available for such children; and

IT IS FURTHER ORDERED that jurisdiction be retained pending my further order.

IN WITNESS WHEREOF, I, GORDON M. AMBACH, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 2nd day of September, 1977.

Commissioner of Education

Education Commission of the States
[illegible] LINCOLN TOWER • [illegible] LINCOLN STREET
[illegible] • DENVER, COLORADO [illegible]

October 18, 1977

The Honorable Jennings Randolph
U.S. Senator
Chairman, Subcommittee on Handicapped
Committee on Human Resources
105 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

This is in reply to your letter of July 6, 1977, addressed to Mr. Henrik N. Dullea, Assistant Secretary for Education and Arts in the Office of Governor Hugh L. Carey of New York. Mr. Dullea testified before the Subcommittee on the Handicapped on behalf of the Education Commission of the States (ECS) on the Education for All Handicapped Children's Act of 1975, P.L. 94-142.

Mr. Dullea has already responded to question #2 in your letter regarding the steps being taken by New York to get children off waiting lists for evaluation and reevaluation. He asked that I respond on his behalf to the other questions which relate to ECS policy and to information available through ECS.

Before responding to the specific questions, I wish to reiterate the strong support of ECS for the substantive objectives of P.L. 94-142. Our recommendations for amendments are not motivated, as some have suggested, by a desire to retreat from the goals set by this law. On the contrary, our intent has been, and continues to be, to improve the law and to obtain substantially increased federal funding to insure effective implementation and fulfillment of the hopes and expectations of handicapped children.

Responses to specific questions are as follows:

Question #1. Position of ECS on State Agency Supervision
The position of ECS on State Agency Supervision as stated in the policy position adopted by the Commission at the June 1977 Annual Meeting is as follows:

> P.L. 94-142 requires that the state education agency (SEA) be responsible for assuring that the requirements of the act are carried out and that the SEA provide general supervision for programs for education of handicapped children in the state, including programs of any other state or local agency. All programs must meet the standards of the SEA. The intent of this provision is clearly to provide a single point within state government for overall planning, coordination and accountability for education of handicapped children. However, the specific language of the statute conflicts with the constitutions and statutes of a number of states. The policy position of ECS is that federal laws should set forth the substantive objectives to be achieved through federal assistance and should leave the specification of state structure to be determined by the states with respect to education of handicapped children, in accordance with state law. Following from this, the SEA should be assigned responsibility, if so authorized by state law, for statewide planning, coordination, policy development, and establishment of standards for education of handicapped children. However, if these responsibilities are beyond those authorized for the SEA by state law, the state should establish a mechanism, in accordance with state law, for general supervision of all programs for education of handicapped children in the state.

The statement by Dr. Homer O. Elseroad, Director of the ECS Department of Elementary and Secondary Education Services, which is quoted in your letter was made without the benefit of a formally approved ECS policy position on the subject but on the basis of his professional judgment that there should be a single point within state government for overall planning, coordination and accountability for education of handicapped children.

Since the enactment of P.L. 94-142, we have developed a fuller understanding of the diversity among the states and the complexities of state agency responsibilities for education of handicapped children. The formal ECS position adopted in June 1977 was developed because of these points:

(1) the ECS policy that federal laws should set forth the substantive objectives to be achieved through federal assistance and should leave the specification of state structure to be determined by the states in accordance with state law;
(2) the evidence, based on reports from states, that the statutes of several states did not assign to the SEA the broad authority required by P.L. 94-142; and
(3) the opinion of legal counsel that interagency agreements not backed by state statutes would not provide the SEA with the legal authority with respect to other state agencies required to assure the single point of accountability for education of handicapped children intended by the law.

In direct response to the question in your letter:

(1) the formal ECS position on SEA did not change since such a position was not in effect in 1975;
(2) the intent of Dr. Elseroad's professional judgment on SEA supervision is consistent with the intent of the 1977 ECS policy position;
(3) the 1977 ECS policy position did not result from changes in state law since 1975, but from a fuller understanding of the differences in state structures among the states and the complexities associated with defining in state law a single accountability point for education of handicapped children.

Questions #3, State Agency Supervision; #4, Authority for Interagency Agreements; #6, Appeal to State Education Agency.

These three questions are grouped together because each required state-by-state data and documentation not available at ECS, or to our knowledge, the Bureau of Education for the Handicapped (BEH). In an effort to be fully responsive to your letter, ECS undertook a survey of special education directors to obtain the data and documentation requested in questions #3, 4 and 6.

The survey instrument was mailed on August 27, 1977, with a response date of September 12, 1977. To date only 25 states have responded in some form. Many of the responses are incomplete; many did not include the requested documentation. Necessary followup with the states and analysis of both responses and documentation will be continued and a final report of the survey will be given to the Subcommittee when it is completed.

In the meantime, I am enclosing a progress report which provides incomplete, preliminary data from responding states (see Attachment B). This progress report is based on questionnaire responses only and not on examination of the accompanying documentation, most of which is still incomplete.

As indicated in response to question #1, the data supporting the need for the amendments recommended by ECS was obtained largely from verbal reports from the states. For example, in each of the regional conferences funded by BEH and cosponsored by ECS, the National Conference of State Legislatures, the National Association of State Boards of Education and the National Governors' Conference, specific problems were identified and then classified with the assistance of the BEH staff as issues that could be addressed in either of three ways:

- by further explanation by BEH staff;
- by modification of draft regulations; and
- by changes in the statute.

Despite early confidence about the availability of hard data with regard to costs and implementation problems, we have learned how very difficult it is to find out what is really going on. Since mid-1975, NCS has not had funding specifically to support a staff capability in special education. The staffing of our efforts on P.L. 94-142 has been provided by people who already had full-time assignments in other areas and by reallocation of already scarce resources. Much of our information on state problems is anecdotal: obtained from letters from constituents, from personal contacts and from the concerns expressed by state people at the recent series of regional meetings.

The dramatic changes in state laws, policies and regulations in the past year (reflecting, incidentally, an overwhelmingly positive effort by states to comply with the timetables in the law) mean that, to our knowledge, no readily accessible up-to-date source of information about the actual provisions in existing state laws and policies is available. We have found that recently-published studies of state laws, of due process provisions and other matters bearing on the issues we have raised are hopelessly out-of-date for a number of states.

Although the enclosed progress report is incomplete, it illustrates the complexity of the issues and the diversity among the states in the approaches to state responsibility for special education.

Question #5, Do you believe that other State agencies that deliver services to the handicapped, such as the Vocational Rehabilitation Agency, should be encouraged to coordinate services with school districts, and provide technical assistance as might private facilities with experience with the handicapped? Does the direct services language of the present Act (P.L. 94-142) pose a bar to some States in doing this?

We certainly believe that vocational rehabilitation agencies and private facilities serving the handicapped should be utilized to the fullest extent possible in the provision of special education and related services. Specifically, rehabilitation counselors could and should be involved in the development of plans for handicapped students who have vocational potential and are at-or-near the age where the vocational rehabilitation program is pertinent to their needs. Further, the counselor system which is a unique and prime element of the vocational rehabilitation program should be utilized both directly and as a model for the case management required to meet the needs of handicapped children — specifically, in the preparation and monitoring of individual education programs. Perhaps the greatest potential for effective participation of agencies outside the education structure is through cooperative agreements between local educational agencies (LEAs) and private facilities such as rehabilitation centers, clinics specializing in remedial services and the like. In our judgment, many of the related services envisioned by the statute may best be provided by this means rather than through LEAs trying to develop their own capacity in these fields. The statute does not impose a bar to such relationships but the heavy emphasis in the law and the regulations on provision of service by LEAs has ledto a mistaken impression in many quarters that arranging for such services on a contractual basis is not permitted. The regulations issued by BEH on August 23, 1977 address this problem. Section 121a.341, Individualized Education Programs, State Education Agency Responsibility, provides as follows:

> (a) Public agencies. The state educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.
>
> (b) Private schools and facilities. The state educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:
>
> > (1) Is placed in or referred to a private school or facility by a public agency; or
> >
> > (2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.
>
> Comments: This section applies to all public agencies, including other state agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a state welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child. *Emphasis Added.

Additionally, Section 121a.306, Nonacademic Services provides:

"(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to handicapped persons, * and employment of students, including both employment by the public agency and assistance in making outside employment available." *Emphasis Added.

Congressional emphasis in support of this policy through some appropriate means would be helpful.

Question #7. Would you more fully describe the impact of the Act and the pass through on school finance and equalization formulas. How could funds be distributed under a uniformly applicable formula?

The basic problem in most typical education finance structures is that the ability to raise local education funds varies substantially among local school districts. Variations for the middle range of school districts can be of the order of three to one; that is, in order to raise an additional $100 per pupil, some districts would have to raise the local tax rate three times that of others. State equalization aid formulas are designed to compensate for these differences in ability to raise local funds for current operating purposes.

With respect to financing special education services, local school districts face the same differential abilities to raise the local share. States have selected two major types of programs for assisting local school districts in financing special education services. The first type, pupil weighted programs, considers both the need for special education services and the fiscal ability to provide for those needs. For these kinds of programs, special education students are given weights that indicate the extra costs of providing the services and a district is allocated aid, through the general equalization formula, on the basis of the total number of weighted students.

The second type of state special education aid program is a separate categorical structure that, outside of the basic aid program, reimburses school districts for some portion of the additional costs of providing special education services. Nearly all categorical types of programs focus only on need and reimburse all local school districts, irrespective of local fiscal ability, a uniform percentage of excess costs. As the percentage approaches 100, the state moves in the direction of full state assumption of special education costs.

However, when the reimbursement level is below 100 percent, local school districts incur varying burdens in raising the local share. In states where the reimbursement level is significantly below 100 percent, policy research has documented a disequalizing tendency in state categorical aid flows, i.e., more aid per pupil flows to the high wealth, high income districts than vice versa. States are beginning to take corrective action for this unanticipated result.

Since federal special education aid under P.L. 94-142 flows to local school districts on the basis of need only, i.e., counts of handicapped students, and irrespective of local fiscal ability, it can have potential disequalizing effects in at least three ways. First, in those states with fully funded pupil weighted programs, the federal aid will be a windfall, unequalized allotment on top of an equalized allocation of state aid that recognizes the need for special education services. Second, in those states where disequalizing elements have appeared with state programs based on need only, the federal aid is likely to exacerbate those disequalizing elements. Third, since in nearly all states P.L. 94-142 requires increases in services, the slow fiscal phase-in of it will make it more difficult for low wealth, low income school districts to fund the additional services. The anticipated result is that the high wealth, high income districts may identify and fund more easily the areas of needed new services, earn relatively more federal aid and thus further exacerbate a disequalizing situation.

To reduce the potential disequalizing impacts of federal aid under P.L. 94-142, three policy options are possible. The first would be to allocate the federal aid directly through the state aid formula in states with fully funded, comprehensive pupil weighted programs. The second would be to funnel the federal aid through state categorical aid programs if those programs had equalizing elements in them like, for example, in New Jersey. The third would be to continue to allocate the federal aid to local school districts but on the basis of need and wealth, using a matching grant formula with the local wealth measure being that used for the state's general, equalization aid formula.

I hope that our responses to your questions are helpful to you and other members of the Subcommittee as you examine the implementation of P.L. 94-142. As soon as additional information is available from our survey of special education directors, we will make it available to you.

We greatly appreciated the opportunity for Mr. Dullea to present the policy positions of ECS on P.L. 94-142 to the Subcommittee at the hearings in June. If ECS can be of further assistance to you in your efforts to see that this important law is effectively implemented, I hope that you will call upon us. ECS will continue to work for substantially increased federal funding and for improvements in the law to insure that its objectives are fulfilled.

Cordially,

Warren G. Hill

Warren G. Hill
Executive Director

WGH:jeh

cc: Mr. Henrik N. Dullea

ATTACHMENT A

Education Commission of the States
300 Lincoln Tower • 1860 Lincoln Street
(303) 893-5200 • Denver, Colorado 80295

August 26, 1977

As a result of recent testimony before the U.S. Senate Subcommittee on the Handicapped, Chairman Jennings Randolph has asked ECS to provide additional information on state provisions for the education of the handicapped. Some of the questions the subcommittee has asked require specific documentation. Although ECS staff members have been in telephone contact with state education agency personnel, the special documentation required by the Subcommittee on the Handicapped has not been collected, compiled and analyzed. For this reason, ECS is asking your cooperation in an effort to deliver the appropriate information to the subcommittee. This is an opportunity for your state to provide input into the improvement of PL 94-142 (The Education for All Handicapped Children Act).

The enclosed questionnaire has been designed to provide answers to the subcommittee's questions, outlined in a letter from Senator Randolph:

> "What agencies have responsibility for the education of handicapped children in the States? For what age groups? For what disabilities? For providing what services? Please provide documentation."
>
> "Is there authority within each state for interagency agreements and for coordination where there is overlap in function? Please provide legislation and state regulations which set forth this authority, for each of the fifty states."
>
> "How does subsection (c) of section 615 of the Act requiring an appeal to the state education agency pose a problem to some states? Specifically, how does this provision conflict with what state laws? Please provide copies of state legislation and regulations."

Will you, as your state education agency's director for special education services, coordinate responses to our questionnaire? Because the subcommittee needs this information as soon as possible, ECS needs these responses by September 12, 1977. A quick analysis of this information for Congressional testimony is a top priority for ECS, as it seeks to represent appropriately the states' interests and concerns to the federal government.

In addition, the information sought for the requested testimony will be further refined and analyzed for presentation to you and other state constituents as a 50-state comparison of state legal provisions for the education of the handicapped. We believe that you, and others, will find this comparison a useful tool in the continuing development of your state programs.

In filling out the questionnaire, you need to be aware of the following:

1. Extra copies of Section I have been provided, and may be referred to other state agencies (i.e. postsecondary education agencies, health agencies, etc.) with primary responsibilities for the education of the handicapped, if you feel it is necessary in order to provide an adequate response. One copy of Section I should be filled out for each state agency that provides primary services. Please photocopy more copies if necessary.

2. Sections II and III of the questionnaire are designed for state education agency response only.

3. Although each section of the questionnaire includes the phrase: IMPORTANT: PLEASE ATTACH COPIES OF APPLICABLE STATE LAWS, RULES OR REGULATIONS, it is not necessary that ECS receive more than one complete set of such data. For the purposes of the projected 50-state comparison of state legal provisions, please be sure to include one complete copy of your state's laws that provide for the education of the handicapped. Recent amendments, even though they may not be in effect yet, should be included as well.

4. Categories of handicapped groups, services and delivery systems are necessarily broad in order to simplify a quick analysis. Please feel free to qualify your responses in the space provided on the reverse side of Section I.

5. Questions and responses should be directed to Doris Ross, Research and Information Department, ECS, (303) 893-5200.

ECS would very much appreciate your help in this important undertaking, and we are looking forward to your prompt response.

Sincerely,

Warren G. Hill
Executive Director

WGH/rjb

Attachments

P. S. A postpaid envelope is enclosed for your response.

(This space for ECS use only)

Special Survey for Congressional Testimony

EDUCATION OF THE HANDICAPPED

Agency Name ______________________________

Department/Division ______________________________

Address ______________________________

City, State, Zip ____________________ Telephone __________

Contact for More Information ______________________________

Title ______________________________

Telephone number, if different from that listed above ____________________

STATEMENT

A number of agencies share responsibility for providing state services to handicapped citizens between the ages of 3 and 21. As you know, PL 94-142 requires that the state education agency supervise the provision of education for handicapped children ages 3-21. Senator Jennings Randolph's Subcommittee on the Handicapped has asked ECS to provide information on the agencies that are involved in providing services to the handicapped in accordance with state law, policy or regulations, and the services they supervise or provide directly to which age groups for which handicapping conditions. The GRID ON THIS PAGE of the questionnaire has been designed for your use in responding to the following questions.

SECTION I - Questions

1. Which of the handicapped groups listed on this page must receive supervisory or direct services from your agency, as mandated by state laws, rules and regulations? Circle the appropriate numbers for the handicapped groups listed in the left-hand column of the GRID.
2. For each handicapped group for which your agency must provide supervisory or direct services, what is the age range mandated by state laws, rules and regulations? Write your answer in the appropriate box in the GRID
3. What supervisory or direct services must your agency provide to the handicapped children it serves, as mandated by state law, rule or regulation? Place the appropriate letters for each service area listed on this page in the appropriate boxes of the GRID.
4. How are the supervisory or direct services that your agency is mandated to provide delivered? Place the appropriate Roman numerals for each delivery system listed on this page in the appropriate boxes of the GRID.

IMPORTANT: PLEASE ATTACH COPIES OF APPLICABLE STATE LAWS, RULES AND REGULATIONS.

the GRID shown below:

SERVICE AREA

A. Identification and diagnosis
B. Placement
C. Special instructional personnel, books, materials, other aids.
D. Individualized Education Programs
E. Health Care/Supervision.

Fill out one copy of this grid for each state agency that provides primary services.

DELIVERY SYSTEM

I. Instruction in regular classrooms of the state's public school system with or without special personnel; with or without supplemental services provided elsewhere.
II. Instruction in special segregated classes within the regular schools of the state's public school system; or instruction in special segregated day schools within the state's public school system.
III. Instruction in special public institutions or residential facilities that are not considered a part of the regular school system in the state.
IV. State or locally contracted instruction in private special institutions or residential facilities or day schools.

SECTION I -- Agency Responsibility -- RESPONSES TO QUESTIONS 1 THROUGH 4 -- USE GRID BELOW

HANDICAPPED GROUPS	AGE RANGES	SERVICE AREAS	DELIVERY SYSTEMS
1. Mentally Retarded			
2. Hearing-Impaired			
3. Speech-Impaired			
4. Visually Impaired			
5. Emotionally Disturbed			
6. Orthopedically Impaired			
7. Other Health-Impaired			
8. Specific Learning Disability			
9. Non-categorical (other)			
(Circle appropriate numbers)	(Write in age ranges)	(Write in letters)	(Write in Roman numerals)

USE THE REVERSE SIDE OF THIS PAGE TO WRITE IN YOUR SPECIAL OR EXPLANATORY COMMENTS.

EDUCATION COMMISSION OF THE STATES...RESEARCH AND INFORMATION DEPARTMENT...1860 LINCOLN, #300, Denver, Colorado 80295, (303) 893-5200 Questions? Call Doris Ross, Research and Information

Page 1 of 3 pages

STATE EDUCATION AGENCY RESPONSE ONLY

ECS Use Only

Special Survey for Congressional Testimony
EDUCATION OF THE HANDICAPPED

SECTION II
Agency Authority, Cooperation and Coordination

5. Are there, within your state laws, rules and regulations, provisions that mandate interagency cooperation and coordination for the provision of services related to the education of the handicapped?

YES ________ NO ________

6. If YES to question 5, please list here the agencies that are required by laws, rules or regulations to cooperate/coordinate the services that are provided for the education of the handicapped:

7. If YES to question 5, which agency or individual is required by state law, rule or regulation to supervise such cooperation and coordination? If there is no such agency or individual stipulated, write in none.

8. If NO to question 5, that is, if no state-mandated provisions exist for cooperation and coordination of education services for the handicapped by the agencies involved, does such cooperation and coordination occur in actual practice? Please describe such activity below, listing the cooperating/coordinating agencies. Be as brief as possible.

(Use reverse side of page if necessary to continue.)

IMPORTANT: PLEASE ATTACH COPIES OF APPLICABLE STATE LEGISLATION, RULES AND REGULATIONS

Research and Information Department
EDUCATION COMMISSION OF THE STATES
1860 Lincoln, #300
Denver, Colorado 80203

FOR STATE EDUCATION AGENCY RESPONSE ONLY

ECS Use Only

Special Survey for Congressional Testimony
EDUCATION OF THE HANDICAPPED

SECTION III
Appeals and Due Process

Subsection (c) of section 615 of the EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (PL 94-142) reads:

> "If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review."

9. Does this conflict with procedures mandated by law, rule or regulation in your state?

YES ________ NO ________

10. If YES to question 9, please describe briefly the problems related to the conflict between state and federal laws, rules and regulations:

____

____

____

____

____

____

____

____

IMPORTANT: PLEASE ATTACH COPIES OF APPLICABLE STATE LEGISLATION, RULES AND REGULATIONS

Research and Information Department
EDUCATION COMMISSION OF THE STATES
1860 Lincoln, #300
Denver, Colorado 80203

Page 3 of 3 pages

ATTACHMENT B

PROGRESS REPORT

SURVEY OF STATE AGENCY
RESPONSIBILITY FOR
EDUCATION OF THE HANDICAPPED

EDUCATION COMMISSION OF THE STATES (ECS)

OCTOBER 6, 1977

In an effort to respond fully to questions asked by Senator Jennings Randolph, Chairman of the Senate Subcommittee on the Handicapped, ECS is conducting a survey of state special education directors. Senator Randolph's questions were as follows:

1. What agencies have responsibility for the education of handicapped children in the States? For what age groups? For what disabilities? For providing what services? Please provide documentation.

2. Is there authority within each state for interagency agreements and for coordination where there is overlap in function? Please provide legislation and state regulations which set forth this authority, for each of the fifty states.

3. How does subsection (c) of section 615 of the Act requiring an appeal to the state education agency pose a problem to some states? Specifically, how does this provision conflict with what state laws? Please provide copies of state legislation and regulations.

The survey instrument was mailed on August 26, 1977, with a response requested by September 12, 1977. The following is a summary of responses as of October 6, 1977:

Number of States Responding to October 6, 1977:	25
Number of States Providing Some Documentation:	20
Number of States Providing No Documentation:	5
Number of States Providing Section I Response:	
-- For SEA Responsibility	24
-- For Other Agency REsponsibility	10
Number of States Providing Section II Response	24
Number of States Providing Section III Response	24

This progress report includes tables which summarize data from the questionnaires of the states responding to date. The data have not been verified by examination of the documents submitted with the state response and many of these responses are incomplete.

Table I	(Parts A-F) provides information on question 1, state agency responsibility
Table II	Provides information on question 2, interagency agreements
Table III	Provides information on question 3, state-level appeal
Table IV	Presents information for each responding state on all three questions

ECS is continuing its follow-up with the states. After most of the responses have been recorded and accompanying documentation has been analyzed, a final report presenting a narrative review of the data will be prepared.

A copy of the survey instrument and cover letter are enclosed.

I-A

Average Number of Years
(all categories)
SEA must provide
supervisory or direct
services:

(P.L. 94-142 = 18 years)

Years	0	11	12	13	15	16	17	19	20	25
States	MS	GA NV	IN NC	CA FL	AL AR HI ME ND SC	AZ ID KS	CT DE IL TN	OK VA	IA	MI

I-B

Average Low Age
(all categories)
SEA must provide
with supervisory
or direct services:

(P.L. 94-142 = 3 years)

Low Age	0	2	3	4	5	6
States	IA MI OK	VA	IL	CT DE TN	AZ CA FL HI ID KS ME [illegible]	AL AR GA IN NV ND

I-C

Average High Age
(all categories)
SEA must provide
with supervisory
or direct services:

(P.L. 94-142 = 21 years)

High Age	17	18	20	21	25
States	GA NV NC	CA FL IN	HI IA ME	AL IL AZ KS AR ND CT OK DE SC ID TN VA	MI

I-D

SEA Services to the Handicapped
Age Ranges Mandated by State Law
(as indicated by responses on Section I grid)

(P.L. 94-192: ages 3-21)	Mentally Retarded		Hearing-Impaired		Speech Impaired		Visually Impaired		Emotionally Disturbed		Orthopedically Handicapped		Other Health Impaired		Learning Disability		Non-Categorical	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Alabama	6	21	6	21	6	21	6	21	6	21	6	21	6	21	6	21	6	21
Arizona	5	21	5	21	5	21	5	21	5	21	5	21	5	21	5	21	5	21
Arkansas	6	21	6	21	6	21	6	21	6	21	6	21			6	21		
California (4.8)	-5	18	-5	18	-5	18	-5	18	-5	18	-5	18	-5	18	-5	18	-5	18
Connecticut (2.8, 3.8)	-4	21	-4	21	-4	21	-4	21	-4	21	-4	21	-4	21	-4	21	-4	21
Delaware	4	21	0	21	4	21	0	21	4	21	4	21	4	21	4	21	4	21
Florida	5	18	5	18	5	18	5	18	5	18	5	18	5	18	5	18	5	18
Georgia	6	17	6	17	6	17	6	17	6	17	6	17	6	17	6	17	6	17
Hawaii (c-1980)	5	20	5	20	5	20	5	20	5	20	5	20	5	20	5	20		
Idaho	5	21	5	21	5	21	5	21	5	21	5	21	5	21	5	21		
Illinois	3	21	3	21	3	21	3	21	3	21	3	21	3	21	3	21		
Indiana	6	18	6	18	6	18	6	18	6	18	6	18			6	18	6	18
Iowa	0	20	0	20	0	20	0	20	0	20	0	20	0	20	0	20	0	20
Kansas	5	21	5	21	5	21	5	21	5	21	5	21	5	21	5	21	5	21
Maine	5	20	5	20	5	20	5	20	5	20	5	20	5	20	5	20	5	20
Michigan	0	25	0	25	0	25	0	25	0	25	0	25	0	25	0	25		
Mississippi							No state mandatory law											
Nevada	6	17	6	17	6	17	6	17	6	17	6	17			6	17	6	17
North Carolina	5	17	5	17	5	17	5	17	5	17	5	17	5	17	5	17	5	17
North Dakota	6	21	6	21	6	21	6	21	6	21	6	21	6	21	6	21	6	21
Oklahoma	0	21	0	21	4	21	0	21	0	21	0	21	6	21	4	21	0	21
South Carolina	6	21	3	21	6	21	6	21	6	21	6	21	6	21	6	21	0	21
Tennessee	4	21	3	21	4	21	4	21	4	21	4	21	4	21	4	21	4	21
Texas							(No SEA Section I response)											
Virginia	2	21	2	21	2	21	2	21	2	21	2	21	4	21	4	21	4	21

I-E

Service Areas Mandated by State Law For Supervisory or Direct Provision by SEA (as indicated by responses on Section I grid)

	Identification and Diagnosis (A)	Placement (B)	Special Personnel, Materials, etc. (C)	Individual Education Programs (D)	Health Care or Supervision (E)
Alabama	x	x	x	x	
Arizona	x	x	x	x	
Arkansas	x	x	x	x	
California	x	x	x	x Hearing, visual only	
Connecticut	x	x	x	x	
Delaware	x	x	x	x	
Florida	x	x	x	x	
Georgia		x	x	x	
Hawaii	x	x	x	x	
Idaho	x	x	x	x	
Illinois	x	x	x Visual only	x	x Hearing, visual, orthopedic, other health only
Indiana	x	x	x	x	
Iowa	x	x	x	x	x
Kansas	x	x	x	x	
Maine	x	x	x	x	
Michigan	x	x	x	x	
Mississippi			No mandate		
Nevada	x	x	x	x	x Hearing, visual onl
North Carolina	x	x	x	x	
North Dakota	x	x	x	x	
Oklahoma	x	x	x	x	
South Carolina	x	x	x	x	
Tennessee	x	x	x	x	
Texas	x	x	x	x Hearing, visual only	x Hearing only
Virginia	x	x	x	x	

I-F

Delivery Systems for SEA Services Mandated by State Law

	Regular Public School System		Special Institutions	
	Mainstreamed (I)	Segregated (II)	Public (III)	Contracted Private (IV)
Alabama	x excluding speech	x speech, visual, emotional, non-categorical only	x retarded, hearing, non-categorical only	x retarded, hearing, non-categorical only
Arizona	x	x	x	x
Arkansas	x	x		
California	x excluding emotional	x excluding non-categorical	x hearing, visual only	x hearing, visual only
Connecticut	x	x	x	x
Delaware	x excluding non-categorical	x	x excluding retarded, emotional, learning disabled	x
Florida	x	x excluding non-categorical	x retarded, hearing, visual, emotional only	x retarded, emotional, orthopedic, other heal only
Georgia	x	x	x	x non-categorical only
Hawaii	x	x excluding speech	x retarded, hearing, visual, emotional only	x retarded only
Idaho	x	x retarded, hearing, visual only	x	
Illinois	x	x	x excluding speech, learning disabled	x retarded, visual, emotional, non-categorica only
Iowa	x	x	x excluding speech, learning disabled	x
Kansas	x	x excluding speech	x excluding speech	x excluding speech
Maine	x	x	x	x
Michigan	x	x	x	x
Mississippi		No mandate		
Nevada	x	x	x hearing, visual only	x hearing, visual only
North Carolina	x	x	x	x
North Dakota	x	x excluding speech		
Oklahoma	x	x excluding speech		
South Carolina	x	x		
Tennessee	x	x excluding non-categorical	x excluding speech, learning disabled, non-categorical	x
Texas		No SEA report		
Virginia	x	x	x excluding speech, learning disabled, non-categorical	x

II

State Provisions For
Cooperation, Coordination, Supervision

SEA SUPERVISION BY LAW

- AZ (1978)
- CT
- FL
- IA
- KS
- NC
- TN
- TX

INTERAGENCY COOPERATION/COORDINATIO BY LAW: NO EXPLICIT SUPERVISION

- AR (partial)
- GA
- HI
- IN
- ME
- OK
- SC

INTERAGENCY AGREEMENTS WITH SEA SUPERVISION

- AL

INTERAGENCY AGREEMENTS/PRACTICES FOR COOPERATION/COORDINATION ONLY

- CA (partial)
- ID (partial)
- IL
- MI (partial)
- MS (partial)
- NV
- VA

INCONCLUSIVE RESPONSE

- DE
- ND

III

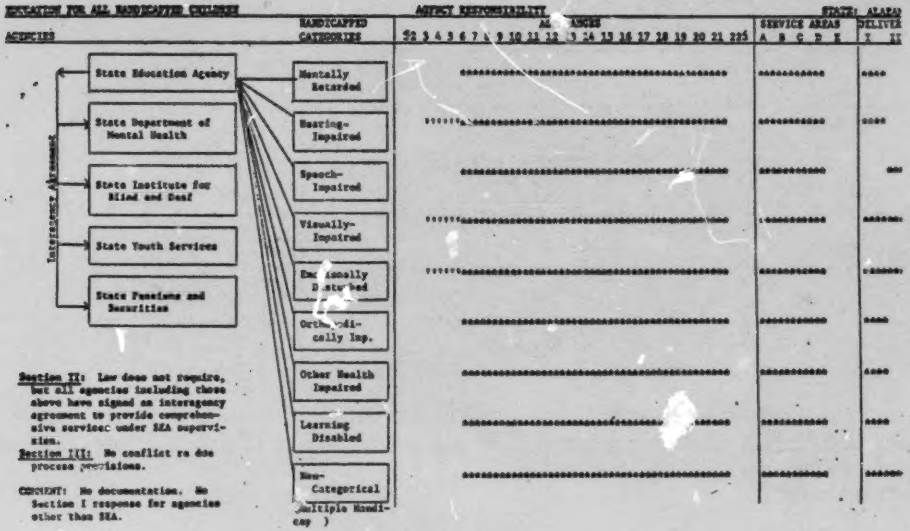
States Reporting Problems
Related to PL 94-142
And State Law
Provisions For Due Process

FL — see graphic display
MI — see graphic display
TX -- implementation -- see graphic display

* - Mandatory
• - Optional

TABLE IV

INCOMPLETE



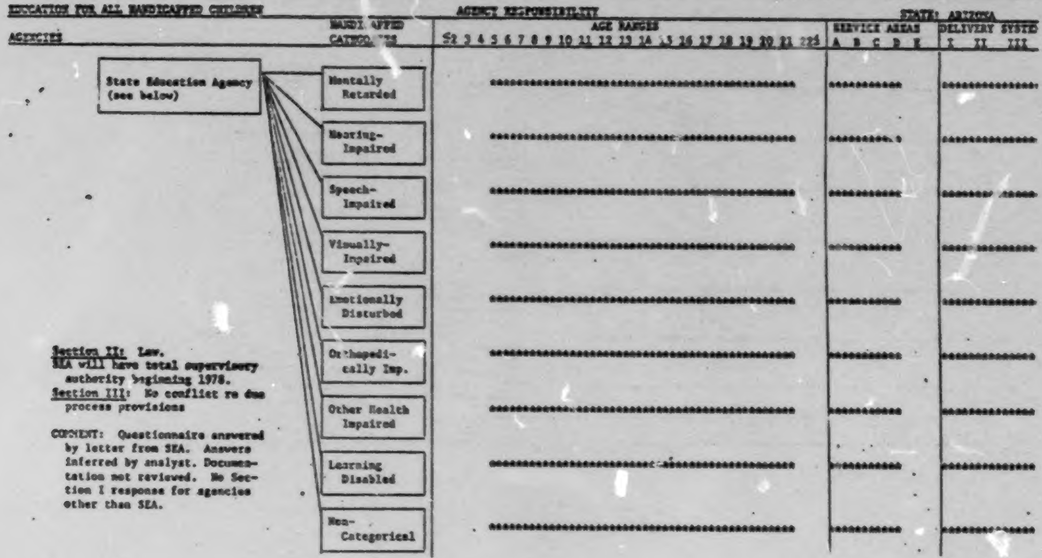
Section II: Law does not require, but all agencies including those above have signed an interagency agreement to provide comprehensive services under SEA supervision.

Section III: No conflict re due process provisions.

COMMENT: No documentation. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE Preliminary



EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: ARIZONA

AGENCIES	HANDICAPPED CATEGORIES	AGE RANGES ≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤	SERVICE AREAS A B C D E	DELIVERY SYSTEM I II III
State Education Agency (see below)	Mentally Retarded	**	**********	**************
	Hearing-Impaired	**	**********	**************
	Speech-Impaired	**	**********	**************
	Visually-Impaired	**	**********	**************
	Emotionally Disturbed	**	**********	**************
	Orthopedically Imp.	**	**********	**************
	Other Health Impaired	**	**********	**************
	Learning Disabled	**	**********	**************
	Non-Categorical	**	**********	**************

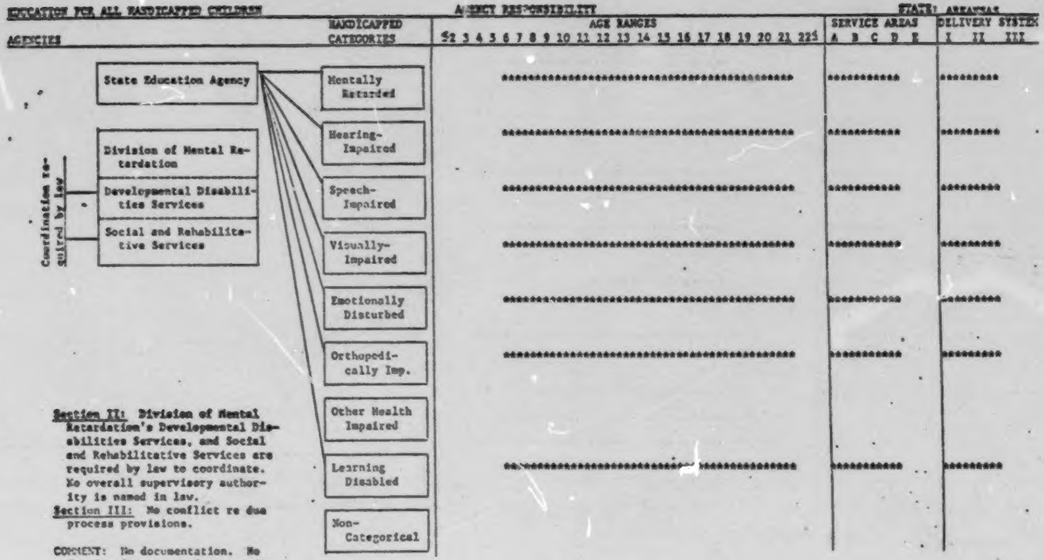
Section II: Law.
SEA will have total supervisory authority beginning 1978.
Section III: No conflict re due process provisions

COMMENT: Questionnaire answered by letter from SEA. Answers inferred by analyst. Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE

Preliminary


EDUCATION FOR ALL HANDICAPPED CHILDREN
AGENCY RESPONSIBILITY
STATE: ARKANSAS
AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤
SERVICE AREAS
A B C D E
DELIVERY SYSTEM
I II III
State Education Agency
Division of Mental Retardation
Developmental Disabilities Services
Social and Rehabilitative Services
Coordination required by law
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical

Section II: Division of Mental Retardation's Developmental Disabilities Services, and Social and Rehabilitative Services are required by law to coordinate. No overall supervisory authority is named in law.

Section III: No conflict re due process provisions.

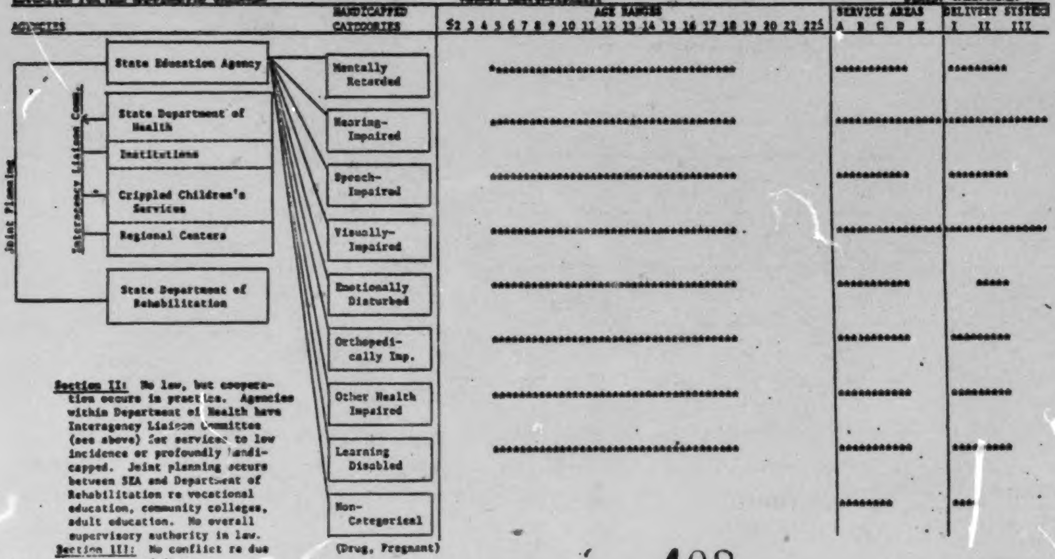
COMMENT: No documentation. No Section I response for agencies other than SEA. Respondent identified delivery systems only as "public schools."

TABLE IV

INCOMPLETE

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: CALIFORNIA


AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≥
SERVICE AREAS
A B C D E
DELIVERY SYSTEMS
I II III
State Education Agency
State Department of Health
Institutions
Crippled Children's Services
Regional Centers
State Department of Rehabilitation
Joint Planning
Interagency Liaison Comm.
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical
(Drug, Pregnant)

Section II: No law, but cooperation occurs in practice. Agencies within Department of Health have Interagency Liaison Committee (see above) for services to low incidence or profoundly handicapped. Joint planning occurs between SEA and Department of Rehabilitation re vocational education, community colleges, adult education. No overall supervisory authority in law.

Section III: No conflict re due process provisions.

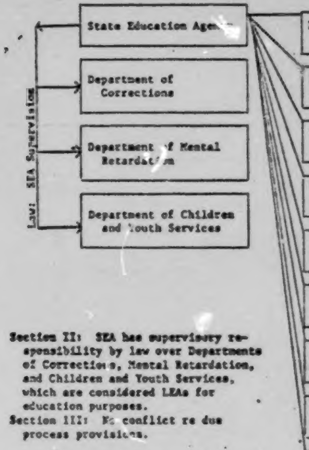
COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: CONNECTICUT

AGENCIES



State Education Agency
Department of Corrections
Department of Mental Retardation
Department of Children and Youth Services
Law: SEA Supervision

HANDICAPPED CATEGORIES	AGE RANGES ≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 ≥22	SERVICE AREAS A B C D E	DELIVERY SYSTEMS I II III
Mentally Retarded	**	***********	**************
Hearing-Impaired	**	***********	**************
Speech-Impaired	**	***********	**************
Visually-Impaired	**	***********	**************
Emotionally Disturbed	**	***********	**************
Orthopedically Imp.	**	***********	**************
Other Health Impaired	**	***********	**************
Learning Disabled	**	***********	**************
Non-Categorical	**	***********	**************

Section II: SEA has supervisory responsibility by law over Departments of Corrections, Mental Retardation, and Children and Youth Services, which are considered LEAs for education purposes.

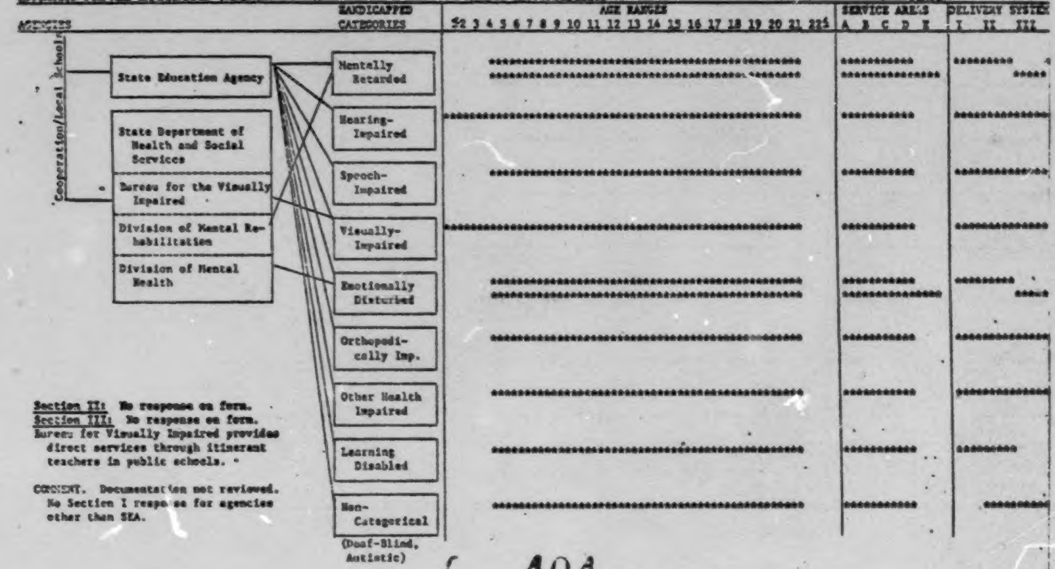
Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: DELAWARE



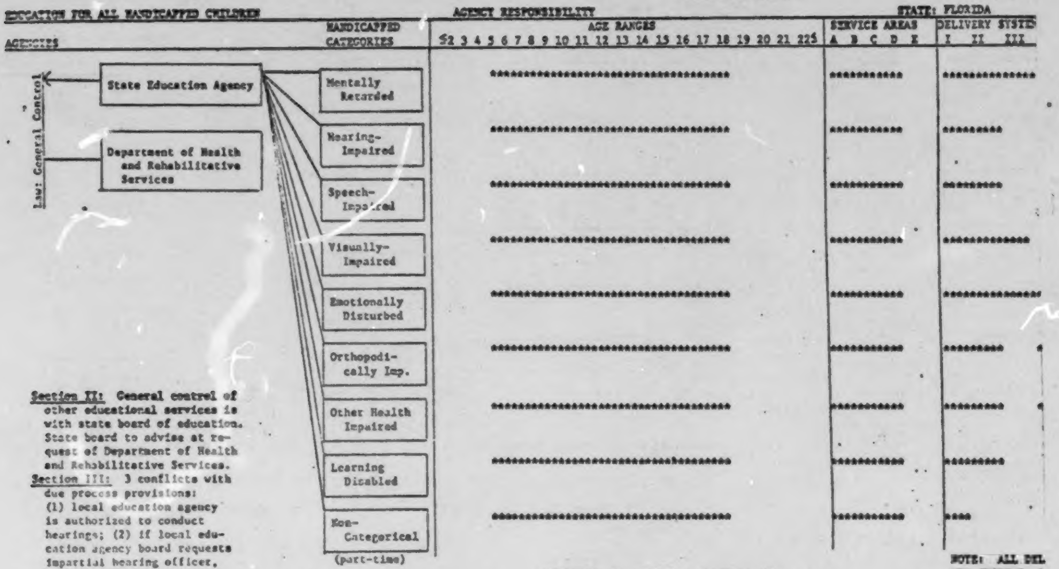
Section II: No response on form.
Section III: No response on form.
Bureau for Visually Impaired provides direct services through itinerant teachers in public schools.

COMMENT. Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE

Preliminary



Section II: General control of other educational services is with state board of education. State board to advise at request of Department of Health and Rehabilitative Services.

Section III: 3 conflicts with due process provisions: (1) local education agency is authorized to conduct hearings; (2) if local education agency board requests impartial hearing officer, such officer can only recommend, not decide; (3) appeals must be made to state district court of appeals, not SEA.

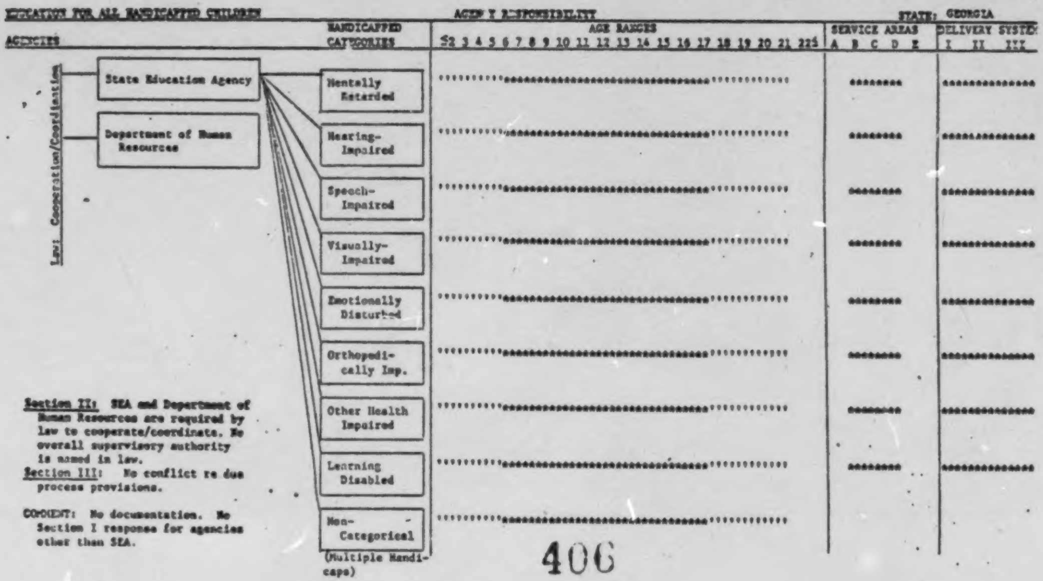
COMMENT: Insufficient documentation not reviewed. No section I response for agencies other than SEA.

NOTE: ALL DEL
ERY SYSTEMS AR
LEGAL OPTIONS.
RESPONSE BASED
ON CURRENT PRAC

TABLE IV

INCOMPLETE Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: GEORGIA


AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤
SERVICE AREAS
A B C D E
DELIVERY SYSTEM
I II III
Law: Cooperation/Coordination
State Education Agency
Department of Human Resources
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical
(Multiple Handicaps)

Section II: SEA and Department of Human Resources are required by law to cooperate/coordinate. No overall supervisory authority is named in law.

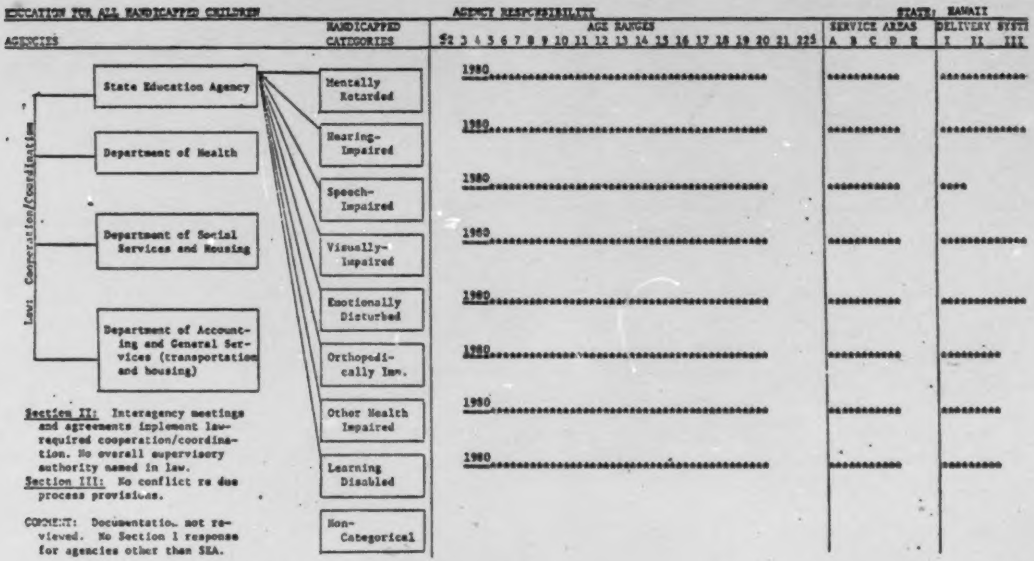
Section III: No conflict re due process provisions.

COMMENT: No documentation. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN — AGENCY RESPONSIBILITY — STATE: HAWAII



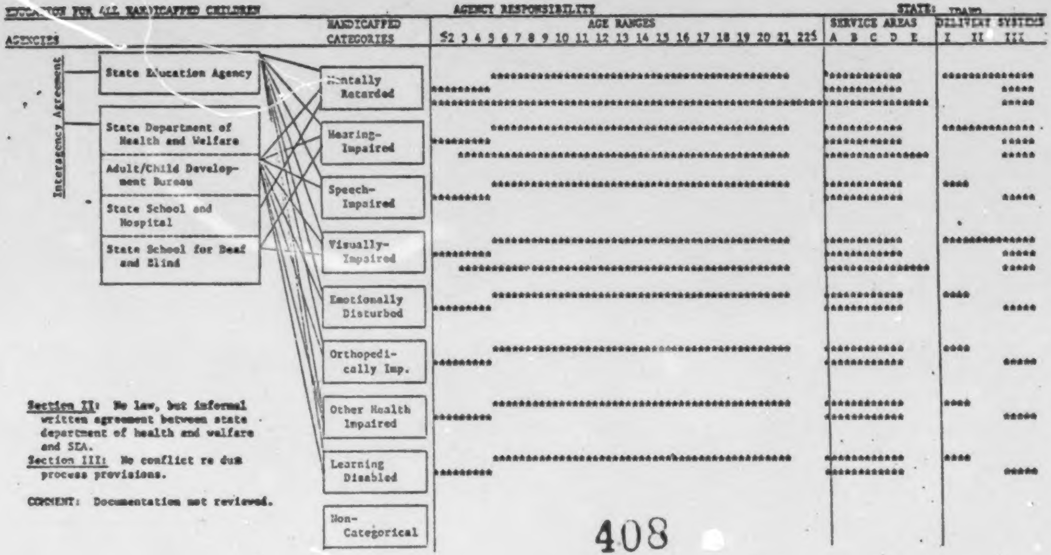
Section II: Interagency meetings and agreements implement law-required cooperation/coordination. No overall supervisory authority named in law.
Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN **AGENCY RESPONSIBILITY** **STATE: IDAHO**



Section II: No law, but informal written agreement between state department of health and welfare and SEA.

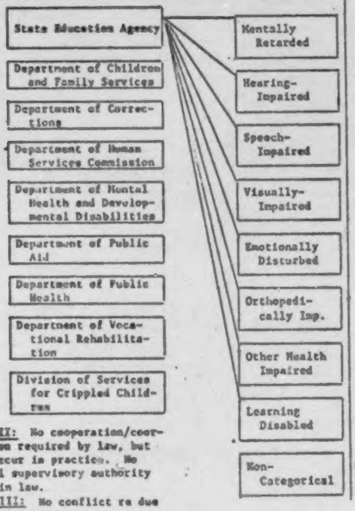
Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed.

TABLE IV

INCOMPLETE Preliminary .

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: ILLINOIS



AGENCIES

- State Education Agency
- Department of Children and Family Services
- Department of Corrections
- Department of Human Services Commission
- Department of Mental Health and Developmental Disabilities
- Department of Public Aid
- Department of Public Health
- Department of Vocational Rehabilitation
- Division of Services for Crippled Children

HANDICAPPED CATEGORIES	AGE RANGES ≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤	SERVICE AREAS A B C D E	DELIVERY SYSTEMS I II III V
Mentally Retarded	**	****** ***	******************
Hearing-Impaired	**	****** *******	***************
Speech-Impaired	**	****** ***	**********
Visually-Impaired	**	****************	****************
Emotionally Disturbed	**	****** ***	****************
Orthopedically Imp.	**	****** *******	***************
Other Health Impaired	**	****** *******	**************
Learning Disabled	**	****** ***	**********
Non-Categorical			

Section II: No cooperation/coordination required by law, but does occur in practice. No overall supervisory authority named in law.
Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA.

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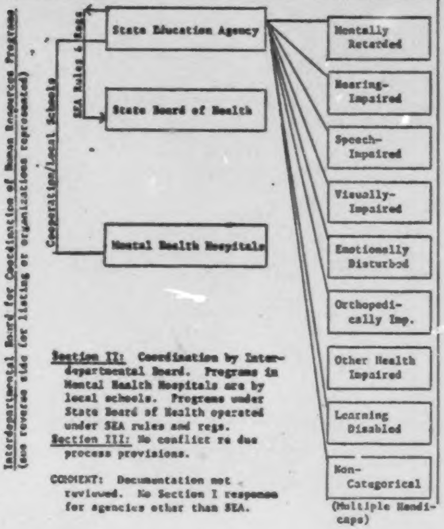
TABLE IV

INCOMPLETE **Preliminary**

EDUCATION FOR ALL HANDICAPPED CHILDREN — AGENCY RESPONSIBILITY — STATE: INDIANA


AGENCIES
Interdepartmental Board for Coordination of Human Resources Programs
(see reverse side for listing or organizations represented)
Cooperation/Local Schools
SEA Rules & Regs
State Education Agency
State Board of Health
Mental Health Hospitals
HANDICAPPED CATEGORIES
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical
(Multiple Handicaps)

HANDICAPPED CATEGORIES	AGE RANGES ≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 ≥22	SERVICE AREAS A B C D E	DELIVERY SYSTEM I II III
Mentally Retarded	6 to 18: ************************************	A to D: ***********	I to II: *********
Hearing-Impaired	6 to 18: ************************************	A to D: ***********	I to II: *********
Speech-Impaired	6 to 18: ************************************	A to D: ***********	I to II: *********
Visually-Impaired	6 to 18: ************************************	A to D: ***********	I to II: *********
Emotionally Disturbed	6 to 18: ************************************	A to D: ***********	I to II: *********
Orthopedically Imp.	6 to 18: ************************************	A to D: ***********	I to II: *********
Other Health Impaired			
Learning Disabled	6 to 18: ************************************	A to D: ***********	I to II: *********
Non-Categorical (Multiple Handicaps)	6 to 18: ************************************	A to D: ***********	I to II: *********

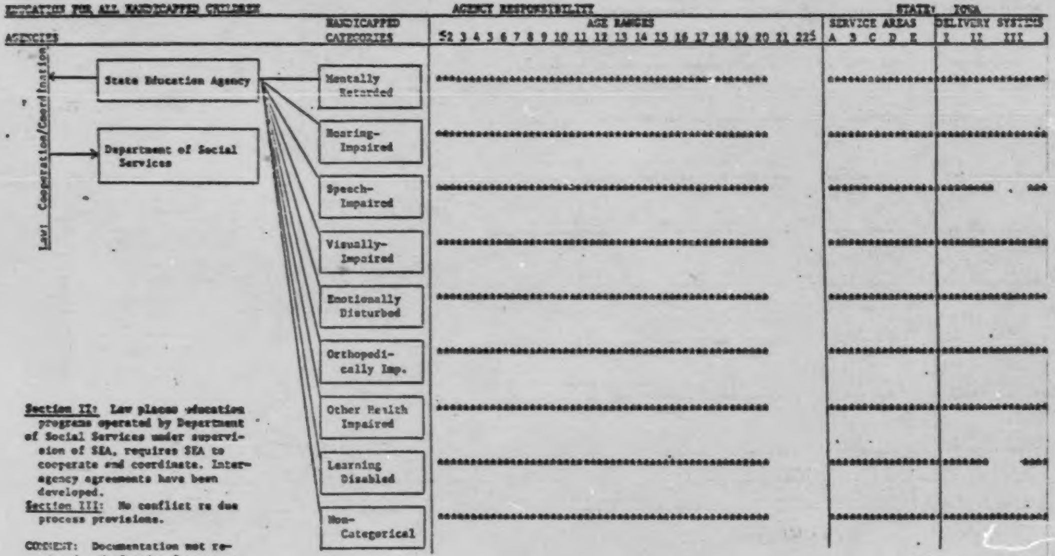
Section II: Coordination by Interdepartmental Board. Programs in Mental Health Hospitals are by local schools. Programs under State Board of Health operated under SEA rules and regs.

Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE Preliminary


EDUCATION FOR ALL HANDICAPPED CHILDREN
AGENCY RESPONSIBILITY
STATE: IOWA
AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤
SERVICE AREAS
A B C D E
DELIVERY SYSTEMS
I II III
Law: Cooperation/Coordination
State Education Agency
Department of Social Services
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical

Section II: Law places education programs operated by Department of Social Services under supervision of SEA, requires SEA to cooperate and coordinate. Interagency agreements have been developed.

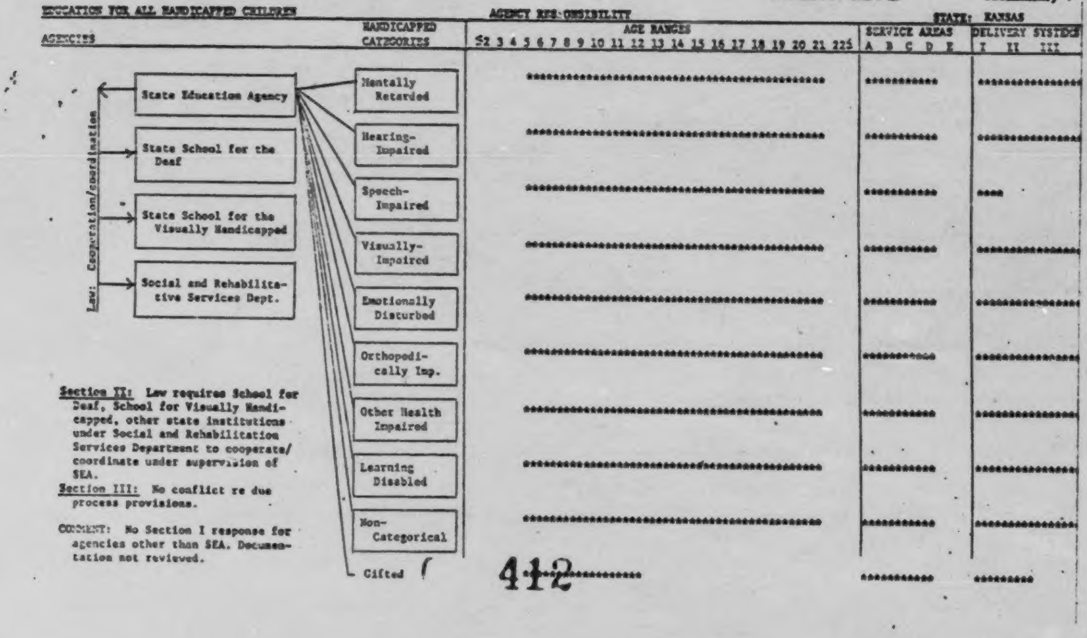
Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA.

TABLE IV

INCOMPLETE

Preliminary


EDUCATION FOR ALL HANDICAPPED CHILDREN
AGENCY RESPONSIBILITY
STATE: KANSAS
AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤
SERVICE AREAS
A B C D E
DELIVERY SYSTEMS
I II III
Law: Cooperation/coordination
State Education Agency
State School for the Deaf
State School for the Visually Handicapped
Social and Rehabilitative Services Dept.
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical
Gifted

Section II: Law requires School for Deaf, School for Visually Handicapped, other state institutions under Social and Rehabilitation Services Department to cooperate/coordinate under supervision of SEA.

Section III: No conflict re due process provisions.

COMMENT: No Section I response for agencies other than SEA. Documentation not reviewed.

TABLE IV

INCOMPLETE

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: MAINE

AGENCIES	HANDICAPPED CATEGORIES	AGE RANGES ≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 ≥22	SERVICE AREAS A B C D E	DELIVERY SYSTEMS I II III IV
State Education Agency	Mentally Retarded	**	************	******************
	Hearing-Impaired	**	************	******************
	Speech-Impaired	**	************	******************
	Visually-Impaired	**	************	******************
	Emotionally Disturbed	**	************	******************
	Orthopedically Imp.	**	************	******************
	Other Health Impaired	**	************	******************
	Learning Disabled	**	************	******************
	Non-Categorical	**	************	******************

Section II: Joint agreements are incorporated into Regulations. Practice: Interdepartmental Coordinating Committee.

Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed. No Section I response for agencies other than SEA

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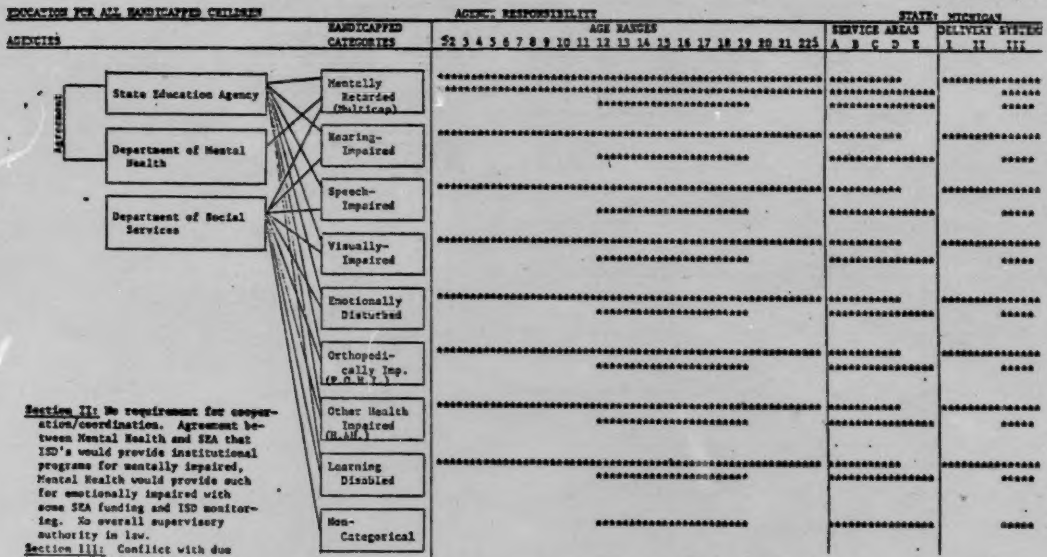
TABLE IV

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN — **AGENCY RESPONSIBILITY** — **STATE: MICHIGAN**


AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤
SERVICE AREAS
A B C D E
DELIVERY SYSTEM
I II III
Agreement
State Education Agency
Department of Mental Health
Department of Social Services
Mentally Retarded (Multicap)
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp. (P.O.H.I.)
Other Health Impaired (H.AH.)
Learning Disabled
Non-Categorical

Section II: No requirement for cooperation/coordination. Agreement between Mental Health and SEA that ISD's would provide institutional programs for mentally impaired, Mental Health would provide such for emotionally impaired with some SEA funding and ISD monitoring. No overall supervisory authority in law.

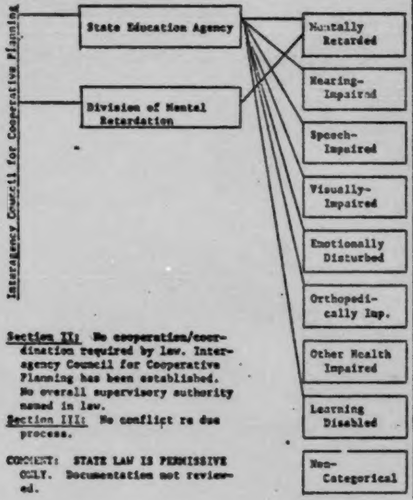
Section III: Conflict with due process: R 340.1725 state law allows only parent (guardian) of child to initiate a state-level hearing.

COMMENT: Documentation not reviewed.
MH response to Section I did not indicate education services to Emotionally Disturbed.

TABLE IV

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN — AGENCY RESPONSIBILITY — STATE: MISSISSIPPI


AGENCIES
HANDICAPPED CATEGORIES
Interagency Council for Cooperative Planning
State Education Agency
Division of Mental Retardation
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical

HANDICAPPED CATEGORIES	≤2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22≤	A	B	C	D	E	I	II	III	IV
Mentally Retarded	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
					•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•		•			•	
Hearing-Impaired	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
Speech-Impaired	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
Visually-Impaired	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
Emotionally Disturbed	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
Orthopedically Imp.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
Other Health Impaired																														
Learning Disabled	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•		
Non-Categorical																														

AGE RANGES: ≤2 – 22≤; SERVICE AREAS: A – E; DELIVERY SYSTEMS: I – IV

Section II: No cooperation/coordination required by law. Interagency Council for Cooperative Planning has been established. No overall supervisory authority named in law.
Section III: No conflict re due process.

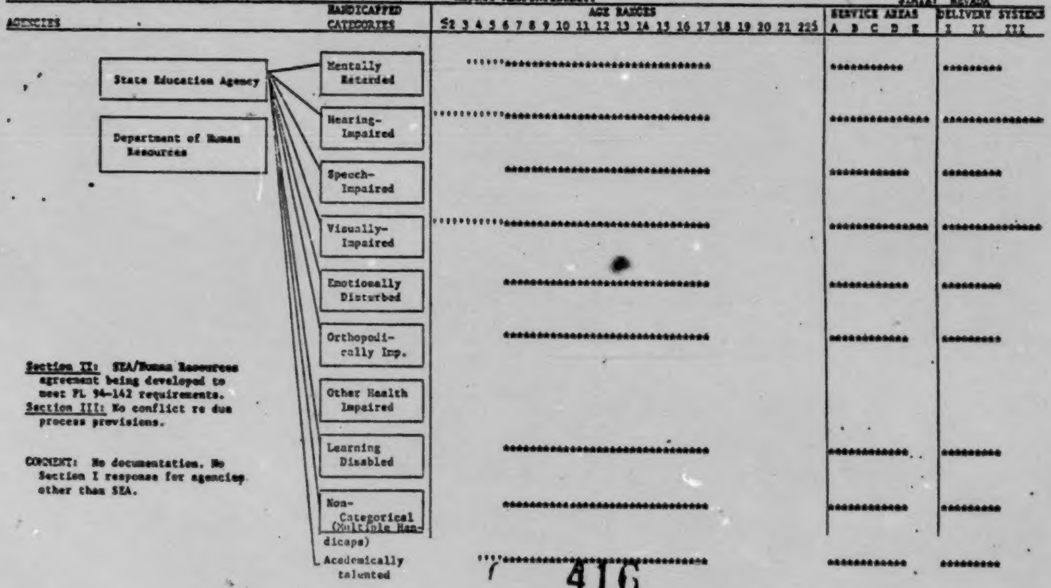
COMMENT: STATE LAW IS PERMISSIVE ONLY. Documentation not reviewed.

TABLE IV

INCOMPLETE

Preliminary .

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: NEVADA



Section II: SEA/Human Resources agreement being developed to meet PL 94-142 requirements.
Section III: No conflict re due process provisions.

COMMENT: No documentation. No Section I response for agencies other than SEA.

TABLE IV

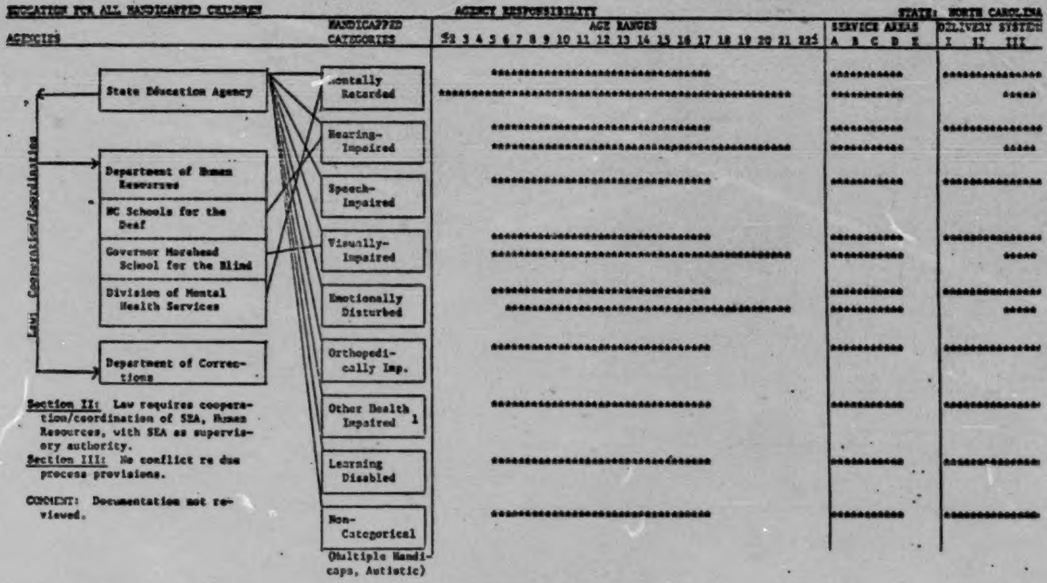
INCOMPLETE

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN

AGENCY RESPONSIBILITY

STATE: NORTH CAROLINA



Section II: Law requires cooperation/coordination of SEA, Human Resources, with SEA as supervisory authority.

Section III: No conflict re due process provisions.

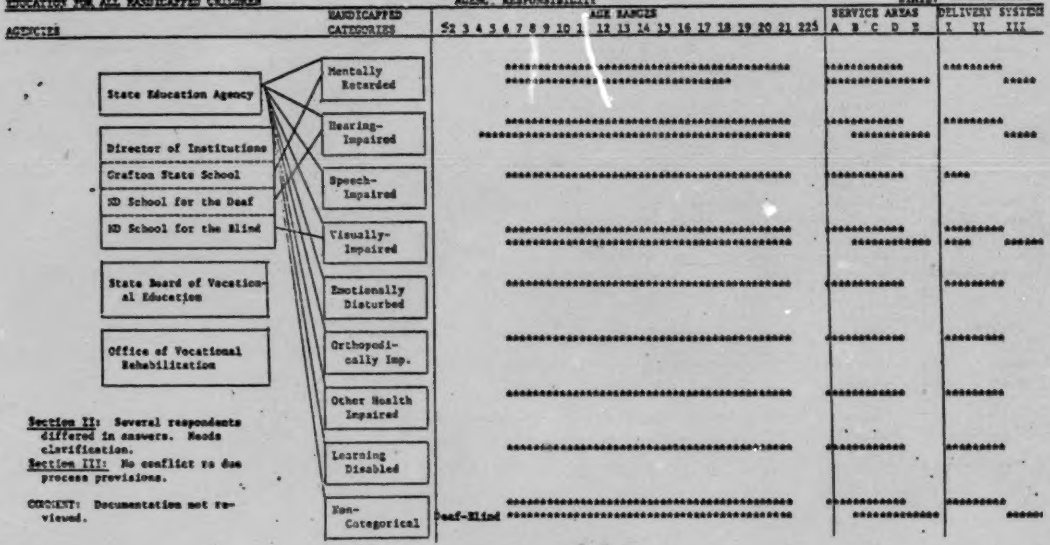
COMMENT: Documentation not reviewed.

1. Includes cerebral-palsied, epileptic, genetically impaired.

TABLE IV

INCOMPLETE - Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN   AGENCY RESPONSIBILITY   STATE: NORTH DAKOTA


AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≥
SERVICE AREAS
A B C D E
DELIVERY SYSTEMS
I II III
State Education Agency
Director of Institutions
Grafton State School
ND School for the Deaf
ND School for the Blind
State Board of Vocational Education
Office of Vocational Rehabilitation
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical
Deaf-Blind

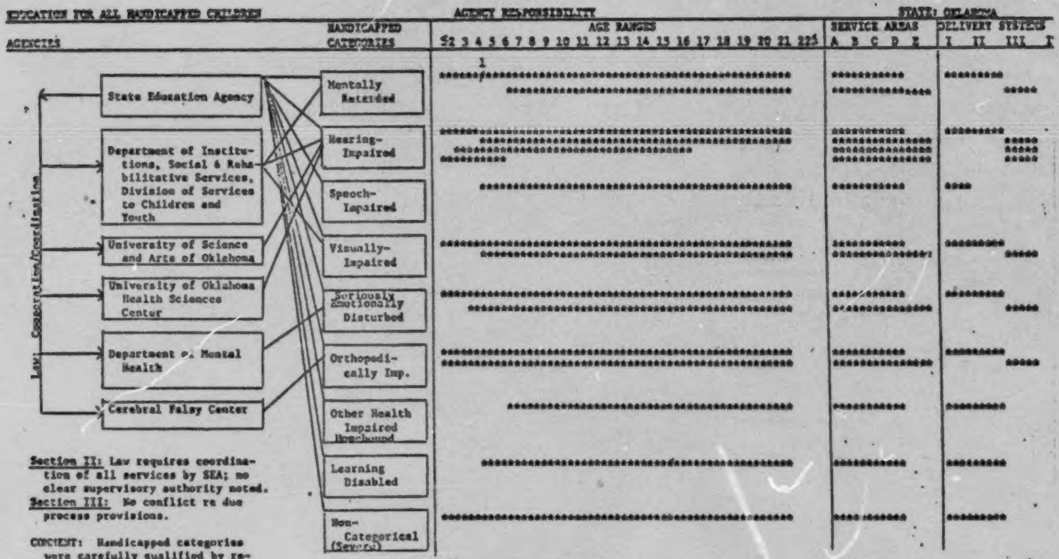
Section II: Several respondents differed in answers. Needs clarification.

Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed.

TABLE IV

Preliminary


EDUCATION FOR ALL HANDICAPPED CHILDREN
AGENCY RESPONSIBILITY
STATE: OKLAHOMA
AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≥
SERVICE AREAS
A B C D E
DELIVERY SYSTEMS
I II III I
1
State Education Agency
Department of Institutions, Social & Rehabilitative Services, Division of Services to Children and Youth
University of Science and Arts of Oklahoma
University of Oklahoma Health Sciences Center
Department of Mental Health
Cerebral Palsy Center
Law: Cooperation/Coordination
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Seriously Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired Homebound
Learning Disabled
Non-Categorical (Severe)

Section II: Law requires coordination of all services by SEA; no clear supervisory authority noted.
Section III: No conflict re due process provisions.

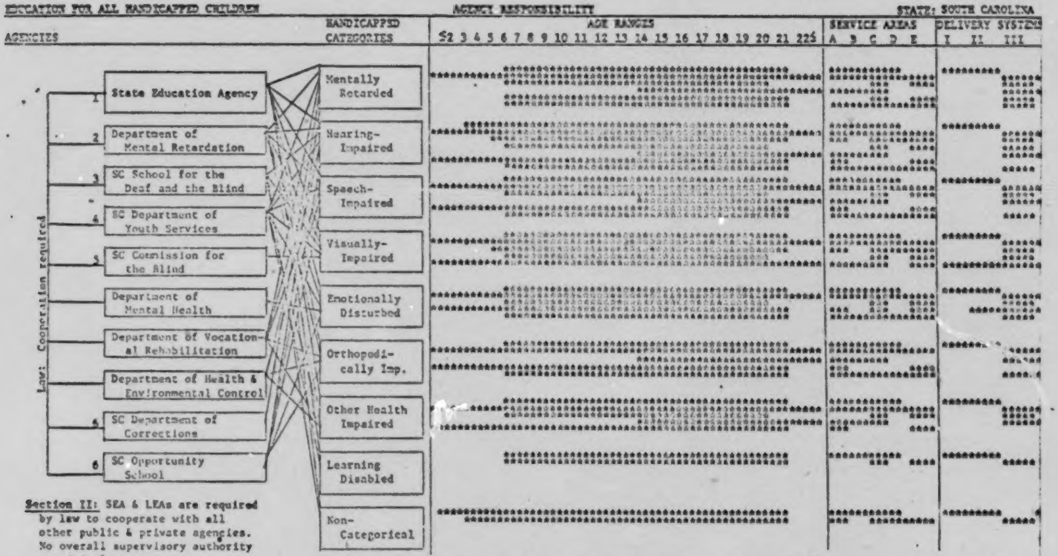
COMMENT: Handicapped categories were carefully qualified by respondent. Documentation not reviewed.

1. Trainable MR 0-4 21; Educable MR 4-21

TABLE IV

Preliminary.

EDUCATION FOR ALL HANDICAPPED CHILDREN   AGENCY RESPONSIBILITY   STATE: SOUTH CAROLINA



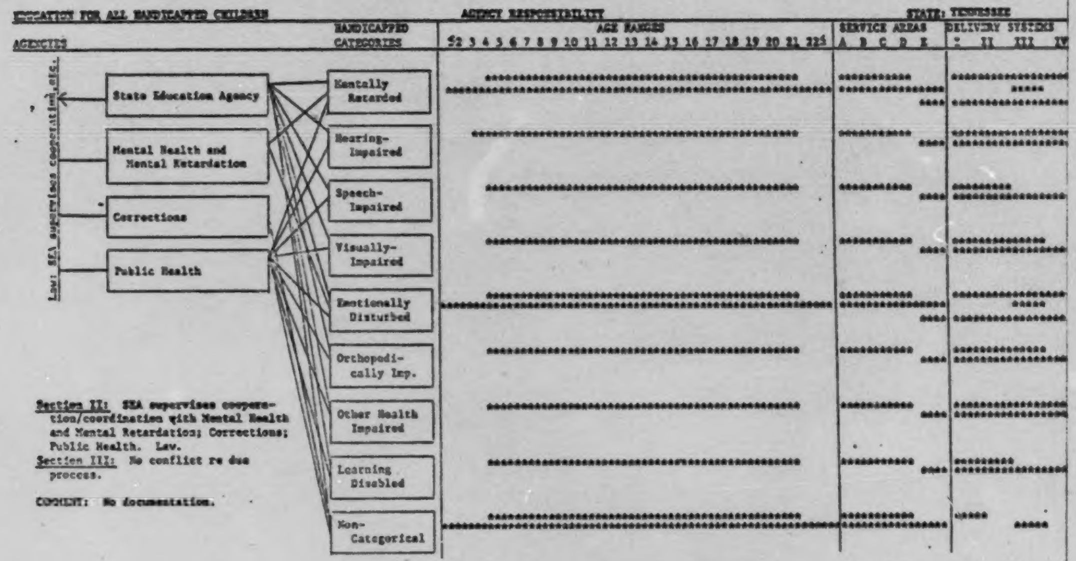
Section II: SEA & LEAs are required by law to cooperate with all other public & private agencies. No overall supervisory authority named in law.

Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed.

1. SEA serves only educable and trainable MR. Non-categorical are deaf-blind.
2. Target population of Dept. of Mental Retardation is severely/profoundly retarded.
3. Deaf & Blind School identifies noncategorical as multi-handicapped.
4. Dept. of Youth Services serves mostly emotionally handicapped or learning disabled.
5. [illegible]

TABLE IV


Preliminary
EDUCATION FOR ALL HANDICAPPED CHILDREN
AGENCY RESPONSIBILITY
STATE: TENNESSEE
AGENCIES
HANDICAPPED CATEGORIES
AGE RANGES
≤2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22≤
SERVICE AREAS
A B C D E
DELIVERY SYSTEMS
I II III IV
Law: SEA supervises cooperation, etc.
State Education Agency
Mental Health and Mental Retardation
Corrections
Public Health
Mentally Retarded
Hearing-Impaired
Speech-Impaired
Visually-Impaired
Emotionally Disturbed
Orthopedically Imp.
Other Health Impaired
Learning Disabled
Non-Categorical

Section II: SEA supervises cooperation/coordination with Mental Health and Mental Retardation; Corrections; Public Health. Law.

Section III: No conflict re due process.

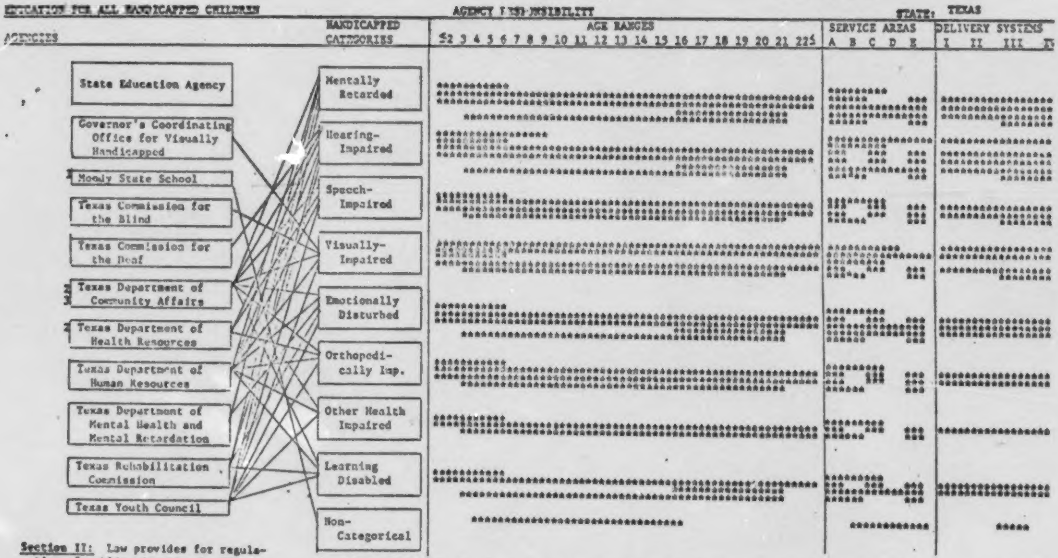
COMMENT: No documentation.

TABLE IV

INCOMPLETE

Preliminary

EDUCATION FOR ALL HANDICAPPED CHILDREN AGENCY RESPONSIBILITY STATE: TEXAS



Section II: Law provides for regulation of public education by SEA and for interagency cooperation and coordination.

Section III.: No conflict re due process provisions, but conflict

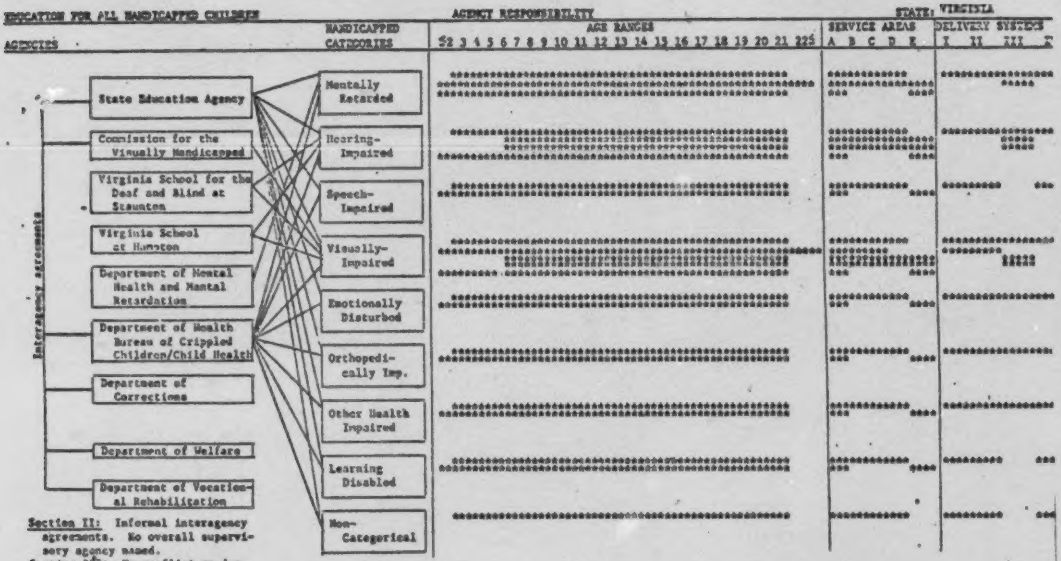
1. Moody State School serves cerebral palsied and multi-handicapped under "non-categorical"
2. Coordinating agency
3. In service area C, develops instructional aids, materials.

COMMENTS: Documentation not reviewed, not complete. No response for Section I by SEA.

TABLE IV

INCOMPLETE

Preliminary



Section II: Informal interagency agreements. No overall supervisory agency named.
Section III: No conflict re due process provisions.

COMMENT: Documentation not reviewed.
Insufficient. No Section I response for Department of Corrections, Department of Welfare, Commission for Vocational Rehabilitation.

Senator RANDOLPH. Representative Massey, State of Texas, Chairman, CSL Education Committee, and Assemblyman Albert Burstein, State of New Jersey, assistant majority leader.

We are glad Senator Hatch has come into the meeting. His schedule, as is true for all Senators, is a difficult one. We appreciate your presence, Senator.

Senator HATCH. I'm very happy to be here. I can only stay for a few minutes, because I have four committee meetings at the same time.

Senator RANDOLPH. I thought we reorganized the Senate.

Senator HATCH. I like to attend these particular hearings, and certainly I think our Chairman does a magnificent job in presiding over them.

Senator RANDOLPH. Thank you very much, Senator Hatch, for being here, even for a short period of time. We know you will study the record of the 3 days of hearings this week, and the other hearings we have had.

STATEMENT OF STATE REPRESENTATIVE TOM C. MASSEY, CHAIRMAN, EDUCATION COMMITTEE, TEXAS HOUSE OF REPRESENTATIVES; AND ASSEMBLYMAN ALBERT BURSTEIN, ASSISTANT MAJORITY LEADER, NEW JERSEY GENERAL ASSEMBLY, REPRESENTING THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. MASSEY. As a legislator, I understand the overlapping of committee meetings and the crush of time.

Mr. Chairman, my name is Tom Massey. I serve as Chairman of the Public Education Committee in the Texas House of Representatives, and as chairman of the Education Committee of the National Conference of State Legislatures. I am appearing here in both capacities.

I apologize for reading a statement. I'm a little uncomfortable reading a statement, but in the interests of trying to be organized and a little more brief than possibly otherwise, I will read this statement.

Mr. Chairman, there is ample evidence that many handicapped children in the United States are not receiving a proper special education. The problem we face is finding the best and quickest means of overcoming existing deficiencies in existing services. The State of Texas has been struggling with this matter for a number of years. We believe 425,000 children in Texas require some form of special education. We are now providing services for 335,000, about twice as many as 5 years ago. Our expenditures for handicapped children from State and local revenues total about $303 million and are sufficient to provide the typical special education pupil about twice the resources supplied to Texas school children who are not handicapped. Our expenditures at this time average about $2,600 per handicapped student.

Public Law 94–142 can help Texas and other States close existing gaps in special education services. It supplies not only additional resources, but also valuable reinforcement for principles which we have been implementing in Texas for a number of years. Texas, for example, was one of the first States to adopt procedures designed to insure that handicapped children will be educated with others to the maximum extent feasible. That is mainstreaming, and it is exemplified in Texas by our plan A Texas education program.

Nonetheless, Mr. Chairman, Texas and other States are earnestly concerned about certain aspects of Public Law 94–142 which we believe are not in the best interest of overcoming remaining service deficiencies. A recent set of proposed amendments to Public Law 94–142 prepared by the National Conference of State Legislatures and other State organizations address the most critical of these concerns. I would like to describe several of these amendments briefly and to discuss with you the reasons we are offering them at this time.

One of our amendments addresses the funding issue that has been discussed at some length in previous testimony. In essence, it proposes that the Congress take steps to place funding for Public Law 94–142 on an entitlement basis instead of the present authorization basis, and to increase the Federal percentage of reimbursable costs immediately to 40 percent.

Before I go on, I would say I appreciate some of the problems that this will probably pose for the budgetary process. We had this in Texas with our plan A, but at the same time, it is important that some additional funding be insured on a predictable basis.

We believe these changes are vital for the following reasons: first, placing Public Law 94–142 on an entitlement basis will make it far easier for the friends of special education in the Congress to achieve the level of Federal funding support they have envisioned. We know that you, Mr. Chairman, and many other members of the Human Resources Committee have worked hard to keep appropriations for Public Law 94–142 apace with authorized outlays. The events of the last 2 or 3 months, however, make it abundantly clear that powerful forces are now building against increases in any Federal education programs.

There is quite a bit of feeling across the education circles in the United States that Federal education programs are in fact designed to cut down Federal expenditures. And the fact that States must meet the basic goals of Public Law 94–142 irrespective of Federal funding do not make your efforts to raise funding for Public Law 94–142 any easier.

In the State of Texas we have quite a demand from the people that come to see us. It goes something like this. If you mandate something, you damn well ought to pay for it. I think the same could be appropriate here. If you mandate us to do certain things, then you ought to pay for it.

Second, there is undeniable evidence that most States will not be able to meet the basic goals of Public Law 94–142 or, for that matter, their own legislation unless Federal spending is increased at a much greater rate than envisioned at the present time. While Texas is fortunate to have few unmet needs and a healthy State budget, the great majority of States are not nearly so advantaged. The U.S. Bureau of Education for the Handicapped has collected data which show that many States are serving no more than 60 to 70 percent of their handicapped children. We estimate that overcoming remaining service deficits will cost at least $3.2 billion over existing special education outlays of about $5.0 billion. State educational agencies and others believe the cost could be much higher. We can argue to be sure about the accuracy of these estimates. But we should not forget one critical fact in the process: the history of estimating the cost of implementing new social programs is littered with the remains of guesses that were much too low. In 1972, for example, Massachusetts legislators who attempted to determine the cost of implementing their widely heralded special education reform law were told, "Not a penny over $40 million." State outlays for special education since that time have increased by over $100 million.

In 1969, when our plan A in Texas was implemented, which had been thought an exemplary special education program, the House sponsor testified or stated that it would not cost more than $35 million. This year, Mr. Chairman, instead of $35 million, it was about $250 million.

Had we not put some kind of limit in the last legislative session on plan A, it would have skyrocketed more. That goes back to what I said earlier about entitlement funding. I understand the problems with entitlements, but I want to emphasize that we do believe sincerely that with the mandated requirements of Public Law 94–142 we should have some additional funding on a predictable basis.

Senator RANDOLPH. Now you speak of additional funding, Representative Massey, and I wonder how you would explain the fact that of the $315 million appropriated, as I recall, some $65 million remains unused? Is it a problem with the formula rather than with the amount of money?

Mr. MASSEY. I am not sure I can adequately answer that right here, Senator. But I do know that with the experience of the State of Texas with the number of Federal programs, because of the way they interact one with another, we have left unspent some funds that could be more adequately spent in the State had we a little more flexibility about the distribution of those funds. Perhaps this could be approached in the same way.

Senator RANDOLPH. Is it on account of the children involved, not flexibility——

Mr. MASSEY. That may be, yes. An additional problem, Mr. Chairman, is the qualified personnel that are required of the State by Public Law 94–142. We are going to have a problem in supplying qualified personnel.

Senator RANDOLPH. Thank you very much.

Mr. MASSEY. I am sorry for the inadequacy of my answer, but I will try to supply a more adequate answer.

Senator RANDOLPH. We know you are concerned because you have been directing at least a portion of your comment to a lack of funds.

Mr. MASSEY. That is true. While funding is not a major problem for my home State, it is for many others. Texas has a healthy budget surplus but the great majority of States are facing serious financial problems and will not be able to meet the mandates of Public Law 94–142 without a substantial increase in Federal assistance.

Senator RANDOLPH. I know Senator Hatch is interested in that, even though he is not questioning you about it. It is a matter of unspent money, Senator Hatch, and whether the problem is formula.

Senator HATCH. I think we need more funds, not less funds. The formula sometimes leaves a little bit to be desired.

Senator RANDOLPH. We have a $65 million surplus.

Senator HATCH. Throughout the country?

Senator RANDOLPH. Yes. I did not want to belabor this with each of the witnesses.

Mr. MASSEY. Being from Texas, I might be better able to answer questions relative to my State. I think our concern from the State of Texas is not primarily with the funding, although I have heard that from other States in the meetings I have attended across the United States, but with the conflicts with our State requirements and State legislation which we consider to be adequate, and that of 94-142 that I will try to touch briefly on.

Senator HATCH. You are only missing about 100,000 of your handicapped children?

Mr. MASSEY. That's my best estimate.

Senator HATCH. That is the basic record, and we want to have them all receive education. I think you're doing a great job down there, it looks like to me, compared to some States.

Mr. MASSEY. Senator, that is what I hear in the meetings that I have attended on special education across the States, that we do have a very good program.

Senator HATCH. It seems to me that you do.

Mr. MASSEY. Next is administrative requirements. Successful implementation of Public Law 94-142 not only will require more Federal aid, it will necessitate rethinking some of its administrative requirements. The National Conference of State Legislatures believes that the Congress should take immediate action to eliminate provisions in the law that now force a needless confrontation between State and Federal law in two areas: (1) supervision of special education programs; and (2) due process appeal machinery.

Section 612 of Public Law 94-142 requires that States receiving assistance must assign their State educational agency responsibility for the "general supervision" of services received by handicapped children under the provisions of their individualized educational programs. The intent of this provision clearly is to provide a single point within State government for overall planning, coordination and accountability for the education of handicapped children. Nevertheless, we believe that the current language on "general supervision" needs some reworking. Specifically, we believe that the act should be amended in a way which would require States to pursue the objectives of the current language without having to rely on the State educational agency. Let me stress that our intent is not to weaken the pursuit of greater accountability, uniformity and responsibility in special education services. Indeed, many State legislatures are deeply troubled by the crazy-quilt pattern that too often characterizes our special education services. The fact is, however, that the constitutions of several States make it effectively impossible to grant the State educational agency the "general supervision" authority which is required in current legislative language. Florida's constitution assigns control over public education to local school boards, not the State educational agency. Louisiana's constitution divides constitutional authority over education between the State board of education and the chief State school officer. The constitutions of several Western States contain so-called "Indian disclaimer clauses" which limit their right to supervise the education of many native Americans. And several States have no constitutional authority to intervene in the affairs of private schools. In Texas—I say this, I think, half-advisedly—we have no constitutional limit on that, but we have a number of legislative provisions, plus a tradition of the local control. We have 254 counties and over 1,100 school districts, and these range from the city of Houston, the third largest in the Nation, to the least populous county in the United States, and over 900 miles from one end to the other, and there are vast differences.

Clearly there are ways that might be employed to "finesse" the "general supervision" issue. Several previous witnesses have recommended reliance, for example, on interagency agreements. We believe that the Congress would be well-advised to recognize that such agreements could not be legally binding or compelled where recalcitrant units of government wished to avoid them. In short, Mr. Chairman, we are asking the Congress to allow States to implement Public Law 94–142 with administrative arrangements we can use effectively, not with those which are unworkable and impotent.

We also believe that the Congress would be of material help to State special education reform efforts if it would amend Public Law 94–142 to permit States to select the forum they use for hearing appeals from parties aggrieved by the decisions of local educational agencies. As it stands, section 615(c) of Public Law 94–142 specifies that any party aggrieved by the findings of an impartial hearing conducted by a local educational agency shall have the right to appeal such findings to the State educational agency. Between 10 and 15 States, however, do not rely on the State educational agency to handle such appeals; they use other forums. California, for example, uses its counties for this purpose; Nebraska uses a special education appeals board that is independent of its State educational agency; Florida uses a State appeals board empowered to hear persons aggrieved by the results of local hearings on all types of governmental matters. And so forth.

In Texas, the appeal is from the local school board, to the county school board. From that to the commission, and from that to the State school board, and then into the courts.

I might say here that in the first 2 months of this year, we had more appeals before the commissioner and the State board than we had all of last year.

If it were apparent that these arrangements discriminated against handicapped children, one might fairly conclude that they should be changed. There is, however, no such evidence. Indeed, there is some reason to believe that they may make better sense than the arrangement envisioned by Public Law 94–142. Florida's use of one State forum for the review of all local government hearings, for example, permitted the development of a highly professional appeals process. Similarly, California's reliance on counties permitted the appeals process to be much more convenient to parents than if all appeals had to be heard at the State capitol—many miles distant from the extreme northern and southern boundaries.

Finally, Mr. Chairman, I would like to comment on our belief that the Congress should reexamine the disequalizing tendencies in the

Public Law 94–142 formula for allocating aid among local educational agencies.

Beginning with fiscal 1979, States participating in the Public Law 94–142 program must distribute 75 percent of their receipts under the act to local educational agencies in relation to the number of handicapped children receiving special education and related services. This formula, however, permits wealthy communities with high quality services to draw as much Federal aid as poor communities with relatively undeveloped services. As such, it will direct Federal funds not only without particular regard to the character of special education needs, but also in a pattern that will materially undermine overall State school finance equalization efforts, and especially so during the 1980's when Federal funding may exceed $1 billion annually.

This problem, to be sure, could be overcome under the current provisions of Public Law 94–142 if State educational agencies were to exploit a provision which permits them to reallocate entitlements from localities that are providing "full opportunity" to localities that are not. This provision, however, permits reallocation only on an ad hoc basis, requires States to acknowledge that they are not providing all children "full opportunity," and leaves State educational agencies open to the same charges of "favoritism" which led the Congress to substitute the current formula for the old title VI–B grant application mechanism. Accordingly, we believe that Congress should amend Public Law 94–142 in a manner that would retain the 75 percent allocation for local educational agencies, but that would authorize States to allocate Federal funds to local educational agencies in accordance with a uniformly applicable formula of their own creation which would permit consideration of such factors as the prevalence of special education needs and the ability of localities to support them from otherwise available resources.

Mr. Chairman, I have not attempted to exhaust all our concerns in my few minutes before this committee. As I believe you are aware, we have proposed amendments to deal with several other issues: the individualized educational program, child count, and surrogate parent selection perhaps the most significant. We will submit full written testimony on these issues for the record together with specific language for our proposed amendments.

Senator RANDOLPH. Senator Stafford will chair our hearing, and we appreciate very much your coming, Bob. I know it was difficult for you to leave another subcommittee, but we appreciate it very much.

Senator STAFFORD. Thank you, Mr. Chairman. I appreciate the demands on all of us. It sometimes seems to me unrealistic.

Did you have anything else, Mr. Massey?

Mr. MASSEY. I guess to sum up, what we would say is, we would like to see some more flexibility. I talked with Senator Domenici relevant to his education block grant proposal. I do not presume to quote anyone, but I think some of the thrust behind that is, instead of having many particularized categorical grants, that sometimes fund a lot of money to the same pupils, because of the stringent audit requirements, we overlook and completely bypass some other students who need those same services.

If we had a grant—talking about block grant proposals—if we had an overall requirement that a State should develop its own particularized program that could be scrutinized and passed by the Federal Congress, or approved by Federal Congress, and then under that unique plan for that State, it could distribute those funds, it might provide the flexibility, yet meet those needs that are foreseen through by this legislation by the Congress.

Let me say again that I appreciate the opportunity to appear for the State of Texas and for the National Conference of State Legislatures.

Senator STAFFORD. Thank you very much, Mr. Massey. We appreciate your being here very much, and your statement.

Since your statement was not available to the staff until this morning, we will not have questions at this time unless Senator Hatch has some, but for the committee, the Chair will reserve the right to submit questions to you in writing, for response in writing, to be placed in the record later, and the same thing for you, Mr. Burstein.

Before we get to any questions, in any event, Mr. Burstein, we will welcome you. The Chair would like to remind all of the witnesses who may be present and have not yet testified that the subcommittee is under orders from the Senate itself to conclude by 11:30.

We would, therefore, appreciate the cooperation of the witnesses in reducing and summarizing their statements as much as possible so that everybody will have a fair opportunity to make a presentation to the subcommittee.

The full statements, the Chair will assure you, will be made a part of the record as if read, so that other members of the subcommittee, whose assignments have been elsewhere this morning, will have a full chance to read the full statements before the committee deliberations on future legislation.

Asking again for the cooperation of all the witnesses, the Chair will be delighted to hear Mr. Burstein.

Mr. BURSTEIN. Thank you, Mr. Chairman.

With that inhibiting admonition, we'll proceed.

My name is Albert Burstein, and I am assistant majority leader of the New Jersey General Assembly. I also serve as a member of the National Conference of State Legislatures' Education Committee. I am appearing here today in both capacities.

Mr. Chairman, the Education for All Handicapped Children Act of 1975 is intended to assure that all handicapped children receive a "free appropriate public education." The basic requirements for this appropriate education mandate that all States provide special education and related services in the least restrictive environment, that these services and education be provided without charge to parents, that an evaluation of the handicapped child's needs be done on a nondiscriminatory basis and that every handicapped child receive due process of law.

The State of New Jersey has had a mandated special education program since 1952 and a comprehensive program for children, ages 5 to 20, since July 1, 1966. The provision for an individualized education program in Public Law 94-142 has been a part of special education services for handicapped children in New Jersey since

1970. Thus, Mr. Chairman, you can see that the State of New Jersey believes that the requirements in Public Law 94–142 are fair, socially beneficial and should be pursued with diligence.

The difficulty, for States in meeting the requirements of the law lies in the area of funding. State educational agencies believe that expenditures must increase by at least $4.5 billion to provide "full service" for handicapped children. Allowing for known Federal appropriation, State and local governments would be required to increase their annual outlays for special education by at least $2.7 billion to meet the funding level necessary to assure an "appropriate education" for all handicapped children in the 1978 and 1979 school year. Making matters worse, the need for additional special education revenue varies widely from State to State. Approximately 10 States including New Jersey have informed the U.S. Bureau of Education for the Handicapped that they could provide "full service" with less than 100-percent increase in special education revenues. Most have indicated that they would need an increase ranging from 100 to 200 percent. Ten to fifteen States with the least developed services have stated that they will require an increase of 200 percent or more. Thus, overcoming the current shortfall in special education revenues would require many States to increase their effective tax rate for public schools by 5 to 20 percent. Voters, however, have made it unmistakably clear that they do not want and will not support higher school taxes.

In a State such as mine, we have the cap system which has diminishing effect on annual increases in school budgets, ranging from 4 percent in high-rate districts, to about 9 percent in low-rate districts. That kind of cap inhibits growth of our school budgets in ways that are going to cause a squeeze in the expenditure of additional money for the handicapped to pursue in Public Law 94–142.

That, in turn, it seems to me, is going to bring about undesireable consequences in the fallout of confrontation between those who are adequately grouped for special education and a corresponding education budget that would have to fund more general programs. I would hope that this is taken into consideration, sir, with respect to the matter of funding.

Public Law 94–142 in its current form calls for a phasing-in of Federal dollars while State and local districts are not permitted to phase-in special education services in a like manner. Therefore, I believe that the Congress should consider either an immediate increase in the rate of Federal special education cost-sharing to 40 percent of State-local excess costs, or provide to hold all recipients of Federal funding harmless from any of the mandates of Public Law 94–142 until such time as the Federal rate of special education cost-sharing reaches the 40 percent rate envisioned for 1982.

Beginning with fiscal 1979, States participating in the Public Law 94–142 program must distribute 75 percent of their receipts under the act to local educational agencies in relation to the number of handicapped children receiving special education and related services. This formula permits wealthy communities with high quality services to draw as much Federal aid as poor communities with relatively undeveloped services. As such, it will direct Federal funds not only without particular regard to the character of special education needs, but also in a pattern that will materially undermine overall State school finance equalization efforts. This provision runs counter to the new equalization formula established in New Jersey. As a result of a recent court decision we have developed a redistribution system for State dollars which will be more equitable for the States 612 school districts. Thus, Mr. Chairman, I feel that Congress should amend the statute in a manner that would retain the 75 percent allocation for local educational agencies, but would also authorize States to allocate federal funds to local educational agencies in accordance with a uniformly applicable formula of their own creation. Such a formula would permit consideration of such factors as the prevalence of special education needs and the ability of localities to support them from otherwise available resources.

Congress can also contribute to full education opportunity for all handicapped children by allowing State governments the authority to operate special education programs in accordance with their own administrative procedures unless there is compelling evidence that State procedures abridge civil rights. As I stated earlier, Mr. Chairman, New Jersey has had due process procedures for handicapped children since 1966, which meet the peculiar needs of our program. I believe State and local officials can do a better job of pursuing the basic objectives of Public Law 94–142 if we are not compelled to cope with more new administrative procedures.

Public Law 94–142 and New Jersey's Senate bill 3 require that each handicapped child have an individualized educational program. Both laws provide that an educational plan be developed which will meet the education needs of the child and that the most appropriate setting be available for the delivery of specified services. Experience with the individualized educational program as an educational instrument has indicated that it is intended as an educational planning device and not a contract for services or a guarantee of educational achievements. Thus, the provision in Public Law 94–142 for the individualized education program must be amended to specify this intention and thus remove the possibility of the process becoming an adversary proceeding with little educational benefit.

Finally, Mr. Chairman, I would like to address the problem of the currently prescribed procedure for determining the number of handicapped children who are eligible to receive Federal financial assistance. The amount of assistance provided in Public Law 94–142 in any fiscal year is contingent on the size of the Federal appropriation, the national average per pupil expenditure and the number of special education pupils who are aid-eligible. It will be impossible for the States to receive 100 percent of the $315 million appropriation for 1978 as a number of eligible special education pupils multiplied by the average per pupil expenditure generates an aid distribution of only $260 million. The chief cause of this low aid distribution is the method which Public Law 94–142 prescribes for determining the number of aid-eligible special education pupils.

The number of pupils eligible for aid is determined by averaging the number of handicapped children with certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. While it was expected that this counting procedure would generate an aid-eligible population for fiscal 1978 of about 4.6 million handicapped pupils, the actual count appears closer to 3.6 million. This shortfall can be attributed to the fact that students must be counted on an "unduplicated" basis or each child can be counted only once, no matter the number of his or her handicapping conditions. Another weakness in this method is its prohibition against counting special education students on a "cumulative" basis. Thus, children may be considered eligible for Federal aid only if they received special education on either October 1 or February 1 and children who received services at any other point in the year are excluded.

To counteract these weaknesses I believe that any new Federal census of handicapped children should provide for a cumulative count of all handicapped pupils who have received special education and related services by the first full school week during the month of December.

The State of New Jersey is very closely in line with Public Law 94–142 at present and in many instances has provisions in its State law and regulations which go beyond this legislation. We are presently doing a three phase analysis of our law and regulations to bring us into total compliance with Public Law 94–142. The first phase involves the rewriting of existing rules and regulations to bring compliance without statutory changes; the second phase will determine what State statutory changes are needed to go beyond Public Law 94–142 and then develop mechanisms for meeting those requirements; and the third phase will be the development of new rules and regulations to expand our comprehensive program and assure that handicapped children are receiving quality education.

Mr. Chairman and members of the committee I want to thank you for this opportunity to express my concerns about the Education for All Handicapped Children Act.

Thank you.

Senator STAFFORD. Thank you very much for your appearance. When the committee has had a chance to examine your statement further, we may ask you if you are willing to answer some questions in writing for the record.

Mr. BURSTEIN. I will be glad to do so.

Senator STAFFORD. Thank you for appearing here this morning. Also, Mr. Burstein, the speed with which you presented your testimony.

Mr. BURSTEIN. I did the best I could.

[The prepared statements of Messrs. Massey and Burstein with accompanying material follow:]

TESTIMONY ON
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

BEFORE
SUBCOMMITTEE ON HANDICAPPED
HUMAN RESOURCES COMMITTEE
U.S. SENATE

BY

STATE REPRESENTATIVE TOM C. MASSEY
CHAIRMAN, EDUCATION COMMITTEE

TEXAS HOUSE OF REPRESENTATIVES
AND
NATIONAL CONFERENCE OF STATE LEGISLATURES

JUNE 22, 1977

Mr. Chairman, I am Texas State Representative Tom Massey. I serve as Chairman of the Education Committee in the Texas House of Representatives and as Chairman of the Education Committee of the National Conference of State Legislatures. I am appearing here in both capacities.

Mr. Chairman, there is ample evidence that many handicapped children in the United States are not receiving a proper special education. The problem we face is finding the best and quickest means of overcoming existing deficiencies in existing services. My state has been struggling with this matter for a number of years. We believe 425,000 children in Texas require some form of special education. We are now providing services for 335,000 about twice as many as five years ago. Our expenditures for handicapped children from state and local revenues total about $303 million and are sufficient to provide the typical special education pupil about twice the resources supplied to Texas school children who are not handicapped.

Public Law 94-142 can help Texas and other states close existing gaps in special education services. It supplies not only additional resources, but also valuable reinforcement for principles which we have been implementing in Texas for a number of years. Texas, for example, was one of the first states to adopt procedures designed to insure that handicapped children will be educated with others to the maximum extent feasible. Nonetheless, Mr. Chairman, Texas and other states are earnestly concerned about certain aspects of Public Lae 94-142 which we believe are not in the best interest of overcoming remaining service

DEFICIENCIES. A RECENT SET OF PROPOSED AMENDMENTS TO PUBLIC LAW 94-142 PREPARED BY THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND OTHER STATE ORGANIZATIONS ADDRESS THE MOST CRITICAL OF THESE CONCERNS. I WOULD LIKE TO DESCRIBE SEVERAL OF THESE AMENDMENTS BRIEFLY AND TO DISCUSS WITH YOU THE REASONS WE ARE OFFERING THEM AT THIS TIME.

FUNDING

ONE OF OUR AMENDMENTS ADDRESSES THE FUNDING ISSUE THAT HAS BEEN DISCUSSED AT SOME LENGTH IN PREVIOUS TESTIMONY. IN ESSENCE, IT PROPOSES THAT THE CONGRESS TAKE STEPS TO PLACE FUNDING FOR PUBLIC LAW 94-142 ON AN ENTITLEMENT BASIS INSTEAD OF THE PRESENT AUTHORIZATION BASIS, AND TO INCREASE THE FEDERAL PERCENTAGE OF REIMBURSABLE COSTS IMMEDIATELY TO 40 PERCENT. WE BELIEVE THESE CHANGES ARE VITAL FOR THE FOLLOWING REASONS:

> FIRST, PLACING PUBLIC LAW 94-142 ON AN ENTITLEMENT BASIS WILL MAKE IT FAR EASIER FOR THE FRIENDS OF SPECIAL EDUCATION IN THE CONGRESS TO ACHIEVE THE LEVEL OF FEDERAL FUNDING SUPPORT THEY HAVE ENVISIONED. WE KNOW THAT YOU, MR. CHAIRMAN, AND MANY OTHER MEMBERS OF THE HUMAN RESOURCES COMMITTEE HAVE WORKED HARD TO KEEP APPROPRIATIONS FOR PUBLIC LAW 94-142 APACE WITH AUTHORIZED OUTLAYS. THE EVENTS OF THE LAST TWO OR THREE MONTHS, HOWEVER, MAKE IT ABUNDANTLY CLEAR THAT POWERFUL FORCES ARE NOW BUILDING AGAINST INCREASES IN ANY

federal education programs. And the fact that states must meet the basic goals of Public Law 94-142 irrespective of federal funding do not make your efforts to raise funding for Public Law 94-142 any easier.

Second, there is undeniable evidence that most states will not be able to meet the basic goals of Public Law 94-142 or, for that matter, their own legislation unless federal spending is increased at a much greater rate than envisioned at the present time. While Texas is fortunate to have few unmet needs and a healthy state budget, the great majority of states are not nearly so advantaged. The U.S. Bureau of Education for the Handicapped has collected data which show that many states are serving no more than 60 to 70 percent of their handicapped children. We estimate that overcoming remaining service dificits will cost at least $3.2 billion over existing special education outlays of about $5.0 billion. State educational agencies and others believe the cost could be much higher. We can argue to be sure about the accuracy of these estimates. But we should not forget one critical fact in the process: the history of estimating the cost of implementing new social programs is littered with the remains of guesses that were much too low. In 1972, for example, Massachusetts legislators who attempted to determine the cost of implementing their widely-heralded special education reform law were told, "Not a penny over $40 million." State outlays for special education

IN MASSACHUSETTS SINCE THAT TIME HAVE INCREASED BY OVER $100 MILLION.

SENSIBLE ADMINISTRATIVE REQUIREMENTS

SUCCESSFUL IMPLEMENTATION OF PUBLIC LAW 94-142 NOT ONLY WILL REQUIRE MORE FEDERAL AID, IT WILL NECESSITATE RETHINKING SOME OF ITS ADMINISTRATIVE REQUIREMENTS. THE NATIONAL CONFERENCE OF STATE LEGISLATURES BELIEVES THAT THE CONGRESS SHOULD TAKE IMMEDIATE ACTION TO ELIMINATE PROVISIONS IN THE LAW THAT NOW FORCE A NEEDLESS CONFRONTATION BETWEEN STATE AND FEDERAL LAW IN TWO AREAS: (1) SUPERVISION OF SPECIAL EDUCATION PROGRAMS; AND (2) DUE PROCESS APPEALS MACHINERY.

THE "GENERAL SUPERVISION" ISSUE

SECTION 612 OF PUBLIC LAW 94-142 REQUIRES THAT STATES RECEIVING ITS ASSISTANCE MUST ASSIGN THEIR STATE EDUCATIONAL AGENCY RESPONSIBILITY FOR THE "GENERAL SUPERVISION" OF SERVICES RECEIVED BY HANDICAPPED CHILDREN UNDER THE PROVISIONS OF THEIR INDIVIDUALIZED EDUCATIONAL PROGRAMS. THE INTENT OF THIS PROVISION CLEARLY IS TO PROVIDE A SINGLE POINT WITHIN STATE GOVERNMENT FOR OVERALL PLANNING, COORDINATION AND ACCOUNTABILITY FOR THE EDUCATION OF HANDICAPPED CHILDREN. NEVERTHELESS, WE BELIEVE THAT THE CURRENT LANGUAGE ON "GENERAL SUPERVISION" NEEDS SOME REWORKING. SPECIFICALLY, WE BELIEVE THAT THE ACT SHOULD BE AMENDED IN A WAY WHICH WOULD REQUIRE STATES TO PURSUE THE OBJECTIVES OF THE CURRENT LANGUAGE WITHOUT HAVING TO RELY ON THE STATE EDUCATIONAL AGENCY. LET ME STRESS THAT OUR INTENT IS NOT TO WEAKEN THE PURSUIT OF GREATER ACCOUNTABILITY, UNIFORMITY AND RESPONSIBILITY

IN SPECIAL EDUCATION SERVICES. INDEED, MANY STATE LEGISLATURES ARE DEEPLY TROUBLED BY THE CRAZY-QUILT PATTERN THAT TOO OFTEN CHARACTERIZES OUR SPECIAL EDUCATION SERVICES. THE FACT IS, HOWEVER, THAT THE CONSTITUTIONS OF SEVERAL STATES MAKE IT EFFECITVELY IMPOSSIBLE TO GRANT THE STATE EDUCATIONAL AGENCY THE "GENERAL SUPERVISION" AUTHORITY WHICH IS REQUIRED IN CURRENT LEGISLATIVE LANGUAGE. FLORIDA'S CONSTITUTION ASSIGN CONTROL OVER PUBLIC EDUCATION TO LOCAL SCHOOL BOARDS, NOT THE STATE EDUCATIONAL AGENCY. LOUISIANA'S CONSTITUTION DIVIDES CONSTITUTIONAL AUTHORITY OVER EDUCATION BETWEEN THE STATE BOARD OF EDUCATION AND THE CHIEF STATE SCHOOL OFFICER. THE CONSTITUTIONS OF SEVERAL WESTERN STATES CONTAIN SO-CALLED "INDIAN DISCLAIMER CLAUSES" WHICH LIMIT THEIR RIGHT TO SUPERVISE THE EDUCATION OF MANY NATIVE AMERICAS. AND SEVERAL STATES HAVE NO CONSTITUTIONAL AUTHORITY TO INTERVENE IN THE AFFAIRS OF PRIVATE SCHOOLS.

CLEARLY, THERE ARE WAYS THAT MIGHT BE EMPLOYED TO "FINESSE" THE "GENERAL SUPERVISION" ISSUE. SEVERAL PREVIOUS WITNESSES HAVE RECOMMENDED RELIANCE, FOR EXAMPLE, ON INTERAGENCY AGREEMENTS. WE BELIEVE THAT THE CONGRESS WOULD BE WELL-ADVISED TO RECOGNIZE THAT SUCH AGREEMENTS COULD NOT BE LEGALLY BINDING OR COMPELLED WHERE RECALCITRANT UNITS OF GOVERNMENT WISHED TO AVOID THEM. IN SHORT, MR. CHAIRMAN, WE ARE ASKING THE CONGRESS TO ALLOW STATES TO IMPLEMENT PUBLIC LAW 94-142 WITH ADMINISTRATIVE ARRANGEMENTS WE CAN USE EFFECTIVELY, NOT WITH THOSE WHICH ARE UNWORKABLE AND IMPOTENT.

THE DUE PROCESS ISSUE

WE ALSO BELIEVE THAT THE CONGRESS WOULD BE OF MATERIAL HELP TO STATE SPECIAL EDUCATION REFORM EFFORTS IF IT WOULD AMEND PUBLIC LAW 94-142 TO PERMIT STATES TO SELECT THE FORUM THEY USE FOR HEARING APPEALS FROM PARTIES AGGRIEVED BY THE DECISIONS OF LOCAL EDUCATIONAL AGENCIES. AS IT STANDS, SECTION 615 (c) OF PUBLIC LAW 94-142 SPECIFIES THAT ANY PARTY AGGRIEVED BY THE FINDINGS OF AN IMPARTIAL HEARING CONDUCT BY A LOCAL EDUCATIONAL AGENCY SHALL HAVE THE RIGHT TO APPEAL SUCH FINDINGS TO THE STATE EDUCATIONAL AGENCY. BETWEEN 10 AND 15 STATES, HOWEVER, DO NOT RELY ON THE STATE EDUCATIONAL AGENCY TO HANDLE SUCH APPEALS; THEY USE OTHER FORUMS. CALIFORNIA, FOR EXAMPLE, USES ITS COUNTIES FOR THIS PURPOSE; NEBRASKA USES A SPECIAL EDUCATION APPEALS BOARD THAT IS INDEPENDENT OF ITS STATE EDUCATIONAL AGENCY; FLORIDA USES A STATE APPEALS BOARD EMPOWERED TO HEAR PERSONS AGGRIEVED BY THE RESULTS OF LOCAL HEARINGS ON ALL TYPES OF GOVERNMENTAL MATTERS. AND SO FORTH.

IF IT WERE APPARENT THAT THESE ARRANGEMENTS DISCRIMINATED AGAINST HANDICAPPED CHILDREN, ONE MIGHT FAIRLY CONCLUDE THAT THEY SOULD BE CHANGED. THERE IS, HOWEVER, NO SUCH EVIDENCE. INDEED, THERE IS SOME REASON TO BELIEVE THAT THEY MAY MAKE BETTER SENSE THAN THE ARRANGEMENT ENVISIONED BY PUBLIC LAW 94-142. FLORIDA'S USE OF ONE STATE FORUM FOR THE REVIEW OF ALL LOCAL GOVERNMENT HEARINGS, FOR EXAMPLE, PERMITTED THE DEVELOPMENT OF A HIGHLY PROFESSIONAL APPEALS PROCESS. SIMILARLY, CALIFORNIA'S RELIANCE ON COUNTIES PERMITTED THE APPEALS PROCESS TO BE MUCH MORE CONVENIENT TO PARENTS THAN IF ALL APPEALS HAD TO BE HEARD AT THE STATE CAPITOL -- MANY MILES DISTANT FROM THE EXTREME NORTHERN AND SOUTHERN BOUNDARIES.

The Equalization Issue

Finally, Mr. Chairman, I would like to comment on our belief that the Congress should re-examine the disequalizing tendencies in the Public Law 94-142 formula for allocating aid among local educational agencies.

Beginning with fiscal 1979, states participating in the Public Law 94-142 program must distribute 75 percent of their receipts under the Act to local educational agencies in relation to the number of handicapped children receiving special education and related services. This formula, however, permits wealthy communities with high quality services to draw as much federal aid as poor communities with relatively undeveloped services. As such, it will direct federal funds not only without particular regard to the character of special education neees, but also in a pattern that will materially undermine overall state school finance equalization efforts, and especially so during the 1980's when federal funding may exceed $1 billion annually.

This problem, to be sure, could be overcome under the current provisions of Public Law 94-142 if state educational agencies were to exploit a provision which permits them to reallocate entitlements from localities that are providing "full opportunity" to localities that are not. This provision, however, permits reallocation only on an ad hoc basis, requires states to acknowledge that they are not providing all children "full opportunity," and leaves states educational agencies open to the same charges of "favoritism" which

LED THE CONGRESS TO SUBSTITUTE THE CURRENT FORMULA FOR THE OLD TITLE VI-B GRANT APPLICATION MECHANISM. ACCORDINGLY, WE BELIEVE THAT THE CONGRESS SHOULD AMEND PUBLIC LAW 94-142 IN A MANNER THAT WOULD RETAIN THE 75 PERCENT ALLOCATION FOR LOCAL EDUCATIONAL AGENCIES, BUT THAT WOULD AUTHORIZE STATES TO ALLOCATE FEDERAL FUNDS TO LOCAL EDUCATIONAL AGENCIES IN ACCORDANCE WITH A UNIFORMLY APPLICABLE FORMULA OF THEIR OWN CREATION WHICH WOULD PERMIT CONSIDERATION OF SUCH FACTORS AS THE PREVALENCE OF SPECIAL EDUCATION NEEDS AND THE ABILITY OF LOCALITIES TO SUPPORT THEM FROM OTHERWISE AVAILABLE RESOURCES.

MR. CHAIRMAN, I HAVE NOT ATTEMPTED TO EXHAUST ALL OUR CONCERNS IN MY FEW MINUTES BEFORE THIS COMMITTEE. AS I BELIEVE YOU ARE AWARE, WE HAVE PROPOSED AMENDMENTS TO DEAL WITH SEVERAL OTHER ISSUES: THE INDIVIDUALIZED EDUCATIONAL PROGRAM, CHILD COUNT, AND SURROGATE PARENT SELECTION PERHAPS, THE MOST SIGNIFICANT. WE WILL SUBMIT FULL WRITTEN TESTIMONY ON THESE ISSUES FOR THE RECORD TOGETHER WITH SPECIFIC LANGUAGE FOR OUR PROPOSED AMENDMENTS.

TESTIMONY ON
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

BEFORE

SUBCOMMITTEE ON HANDICAPPED
HUMAN RESOURCES COMMITTEE
U.S. SENATE

BY

ASSEMBLYMAN ALBERT BURSTEIN
ASSISTANT MAJORITY LEADER

NEW JERSEY GENERAL ASSEMBLY

AND

THE NATIONAL CONFERENCE OF STATE LEGISLATURES

JUNE 22, 1977

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, MY NAME IS ALBERT BURSTEIN AND I AM ASSISTANT MAJORITY LEADER OF THE NEW JERSEY GENERAL ASSEMBLY. I ALSO SERVE AS A MEMBER OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES EDUCATION COMMITTEE. I AM APPEARING HERE TODAY IN BOTH CAPACITIES.

MR. CHAIRMAN, THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975 IS INTENDED TO ASSURE THAT ALL HANDICAPPED CHILDREN RECEIVE A "FREE APPROPRIATE PUBLIC EDUCATION." THE BASIC REQUIREMENTS FOR THIS APPROPRIATE EDUCATION MANDATE THAT ALL STATES PROVIDE SPECIAL EDUCATION AND RELATED SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT, THAT THESE SERVICES AND EDUCATION BE PROVIDED WITHOUT CHARGE TO PARENTS, THAT AN EVALUATION OF THE HANDICAPPED CHILD'S NEEDS BE DONE ON A NON-DISCRIMINATORY BASIS AND THAT EVERY HANDICAPPED CHILD RECEIVE DUE PROCESS OF LAW.

THE STATE OF NEW JERSEY HAS HAD A MANDATED SPECIAL EDUCATION PROGRAM SINCE 1952 AND A COMPREHENSIVE PROGRAM FOR CHILDREN, AGES 5 TO 20, SINCE JULY 1, 1966. THE PROVISION FOR AN INDIVIDUALIZED EDUCATION PROGRAM IN PUBLIC LAW 94-142 HAS BEEN A PART OF SPECIAL EDUCATION SERVICES FOR HANDICAPPED CHILDREN IN NEW JERSEY SINCE 1970. THUS, MR. CHAIRMAN YOU CAN SEE THAT THE STATE OF NEW JERSEY BELIEVES THAT THE REQUIREMENTS IN PUBLIC LAW 94-142 ARE FAIR, SOCIALLY BENEFICIAL AND SHOULD BE PERSUED WITH DILIGENCE.

THE DIFFICULTY, FOR STATES IN MEETING THE REQUIREMENTS OF THE LAW LIES IN THE AREA OF FUNDING. STATE EDUCATIONAL AGENCIES BELIEVE THAT EXPENDITURES MUST INCREASE BY AT LEAST $4.5 BILLION TO PROVIDE "FULL SERVICE" FOR HANDICAPPED CHILDREN. ALLOWING FOR KNOWN FEDERAL APPROPRIATION, STATE AND LOCAL GOVERNMENTS WOULD BE REQUIRED TO INCREASE THEIR ANNUAL OUTLAYS FOR

SPECIAL EDUCATION BY AT LEAST $2.7 BILLION TO MEET THE FUNDING LEVEL NECESSARY TO ASSURE AN "APPROPRIATE EDUCATION" FOR ALL HANDICAPPED CHILDREN IN THE 1978 AND 1979 SCHOOL YEAR. MAKING MATTERS WORSE, THE NEED FOR ADDITIONAL SPECIAL EDUCATION REVENUES VARIES WIDELY FROM STATE-TO-STATE. APPROXIMATELY 10 STATES INCLUDING NEW JERSEY HAVE INFORMED THE U.S. BUREAU OF EDUCATION FOR THE HANDICAPPED THAT THEY COULD PROVIDE "FULL SERVICE" WITH LESS THAN 100 PERCENT INCREASE IN SPECIAL EDUCATION REVENUES. MOST HAVE INDICATED THAT THEY WOULD NEED AN INCREASE RANGING FROM 100 TO 200 PERCENT. TEN TO FIFTEEN STATES WITH THE LEAST DEVELOPED SERVICES HAVE STATED THAT THEY WILL REQUIRE AN INCREASE OF 200 PERCENT OR MORE. THUS, OVERCOMING THE CURRENT SHORTFALL IN SPECIAL EDUCATION REVENUES WOULD REQUIRE MANY STATES TO INCREASE THEIR EFFECTIVE TAX RATE FOR PUBLIC SCHOOLS BY 5 TO 20 PERCENT. VOTERS, HOWEVER, HAVE MADE IT UNMISTAKABLY CLEAR THAT THEY DO NOT WANT AND WILL NOT SUPPORT HIGHER SCHOOL TAXES.

PUBLIC LAW 94-142 IN ITS CURRENT FORM CALLS FOR A PHASING-IN OF FEDERAL DOLLARS WHILE STATE AND LOCAL DISTRICTS ARE NOT PERMITTED TO PHASE-IN SPECIAL EDUCATION SERVICES IN A LIKE MANNER. THEREFORE, I BELIEVE THAT THE CONGRESS SHOULD CONSIDER EITHER AN IMMEDIATE INCREASE IN THE RATE OF FEDERAL SPECIAL EDUCATION COST-SHARING TO 40 PERCENT OF STATE-LOCAL EXCESS COSTS, OR PROVIDE TO HOLD ALL RECIPIENTS OF FEDERAL FUNDING HARMLESS FROM ANY OF THE MANDATES OF PUBLIC LAW 94-142 UNTIL SUCH TIME AS THE FEDERAL RATE OF SPECIAL EDUCATION COST-SHARING REACHES THE 40 PERCENT RATE ENVISIONED FOR 1982.

BEGINNING WITH FISCAL 1979, STATES PARTICIPATING IN THE PUBLIC LAW 94-142 PROGRAM MUST DISTRIBUTE 75 PERCENT OF THEIR RECEIPTS UNDER THE ACT TO LOCAL EDUCATIONAL AGNECIES IN RELATION TO THE NUMBER OF HANDICAPPED

CHILDREN RECEIVING SPECIAL EDUCATION AND RELATED SERVICES. THIS FORMULA PERMITS WEALTHY COMMUNITIES WITH HIGH QUALITY SERVICES TO DRAW AS MUCH FEDERAL AID AS POOR COMMUNITIES WITH RELATIVELY UNDEVELOPED SERVICES. AS SUCH, IT WILL DIRECT FEDERAL FUNDS NOT ONLY WITHOUT PARTICULAR REGARD TO THE CHARACTER OF SPECIAL EDUCATION NEEDS, BUT ALSO IN A PATTERN THAT WILL MATERIALLY UNDERMINE OVERALL STATE SCHOOL FINANCE EQUALIZATION EFFORTS. THIS PROVISION WILL TOTALLY UNDERMINE THE NEW EQUALIZATION FORMULA ESTABLISHED IN NEW JERSEY. AS A RESULT OF A RECENT COURT DECISION WE HAVE DEVELOPED A REDISTRIBUTION SYSTEM FOR STATE DOLLARS WHICH WILL BE MORE EQUITABLE FOR THE STATES 612 SCHOOL DISTRICTS. THUS, MR. CHAIRMAN I FEEL THAT CONGRESS SHOULD AMEND THE STATUTE IN A MANNER THAT WOULD RETAIN THE 75 PERCENT ALLOCATION FOR LOCAL EDUCATIONAL AGENCIES, BUT WOULD ALSO AUTHORIZE STATES TO ALLOCATE FEDERAL FUNDS TO LOCAL EDUCATIONAL AGENCIES IN ACCORDANCE WITH A UNIFORMLY APPLICABLE FORMULA OF THEIR OWN CREATION. SUCH A FORMULA WOULD PERMIT CONSIDERATION OF SUCH FACTORS AS THE PREVALENCE OF SPECIAL EDUCATION NEEDS AND THE ABILITY OF LOCALITIES TO SUPPORT THEM FROM OTHERWISE AVAILABLE RESOURCES.

CONGRESS CAN ALSO CONTRIBUTE TO FULL EDUCATION OPPORUTNITY FOR ALL HANDICAPPED CHILDREN BY ALLOWING STATE GOVERNMENTS THE AUTHORITY TO OPERATE SPECIAL EDUCATION PROGRAMS IN ACCORDANCE WITH THEIR OWN ADMINISTRATIVE PROCEDURES UNLESS THERE IS COMPELLING EVIDENCE THAT STATE PROCEDURES ABRIDGE CIVIL RIGHTS. AS I STATED EARLIER, MR. CHAIRMAN, NEW JERSEY HAS HAD DUE PROCESS PROCEDURES FOR HANDICAPPED CHILDREN SINCE 1966 WHICH MEET THE PECULIAR NEEDS OF OUR PROGRAM. I BELIEVE STATE AND LOCAL OFFICIALS CAN DO A BETTER JOB OF PURSUING THE BASIC OBJECTIVES OF PUBLIC LAW 94-142 IF WE ARE NOT COMPELLED TO COPE WITH MORE NEW ADMINISTRATIVE PROCEDURES.

PUBLIC LAW 94-142 AND NEW JERSEY'S SENATE BILL 3 REQUIRE THAT EACH HANDICAPPED CHILD HAVE AN INDIVIDUALIZED EDUCATIONAL PROGRAM. BOTH LAWS PROVIDE THAT AN EDUCATIONAL PLAN BE DEVELOPED WHICH WILL MEET THE EDUCATION NEEDS OF THE CHILD AND THAT THE MOST APPROPRIATE SETTING BE AVAILABLE FOR THE DELIVERY OF SPECIFIED SERVICES. EXPERIENCE WITH THE INDIVIDUALIZED EDUCATIONAL PROGRAM AS AN EDUCATIONAL INSTRUMENT HAS INDICATED THAT IT IS INTENDED AS AN EDUCATIONAL PLANNING DEVICE AND NOT A CONTRACT FOR SERVICES OR A GUARANTEE OF EDUCATIONAL ACHIEVEMENTS. THUS, THE PROVISION IN PUBLIC LAW 94-142 FOR THE INDIVIDUALIZED EDUCATION PROGRAM MUST BE AMENDED TO SPECIFY THIS INTENTION AND THURS REMOVE THE POSSIBILITY OF THE PROCESS BECOMING AN ADVERSARY PROCEDING WITH LITTLE EDUCATIONLA BENEFIT.

FINALLY, MR. CHAIRMAN, I WOULD LIKE TO ADDRESS THE PROBLEM OF THE CURRENTLY PRESCRIBED PROCEDURE FOR DETERMINING THE NUMBER OF HANDICAPPED CHILDREN WHO ARE ELIGIBLE TO RECEIVE FEDERAL FINANCIAL ASSISTANCE. THE AMOUNT OF ASSISTANCE PROVIIDED IN PUBLIC LAW 94-142 IN ANY FISCAL YEAR IS CONTINGENT ON THE SIZE OF THE FEDERAL APPROPRIATION, THE NATIONAL AVERAGE PER PUPIL EXPENDITURE AND THE NUMBER OF SPECIAL EDUCATION PUPILS WHO ARE AID-ELIGIBLE. IT WILL BE IMPOSSIBLE FOR THE STATES TO RECEIVE 100 PERCENT OF THE $315 MILLION APPROPRIATION FOR 1978 AS A NUMBER OF ELIGIBLE SPECIAL EDUCATION PUPILS MULTIPLIED BY THE AVERAGE PER PUPIL EXPENDITURE GENERATES AN AID DISTRIBUTION OF ONLY $260 MILLION. THE CHIEF CAUSE OF THIS LOW AID DISTRIBUTION IS THE METHOD WHICH PUBLIC LAW 94-142 PRESCRIBES FOR DETERMINING THE NUMBER OF AID-ELIGIBLE SPECIAL EDUCATION PUPILS.

The number of pupils eligible for aid is determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and Feburary 1 in the year preceding the one in which aid is actually paid. While it was expected that this counting procedure would generate an aid-eligible population for fiscal 1978 of about 4.6 million handicapped pupils, the actual count appears closer to 3.6 million. This shortfall can be attributed to the fact that students be counted on an "unduplicated" basis or each child can be counted only once, no matter the number of his or her handicapping conditions. Another weakness in this method is its prohibition against counting special education students ona "cumulative" basis. Thus, children may be considered eligible for federal aid only if they received special education on either October 1 or February 1 and children who received services at any other point in the year are excluded.

To counteract these weakness I believe that any new federal census of handicapped children should provide for a cumulative count of all handicapped pupils who have received special education and related servicec by the first full school week during the month of December.

The State of New Jersey is very closely in line with Public Law 94-142 at present and in many instances has provisions in its state law and regulations which go beyond this legislation. We are presently doing a three phase analysis of our law and regulations to bring us into total compliance with Public Law 94-142. The first phase involves the rewriting of existing rules and regulations to bring compliance without statutory changes; the second phase will determine what state statutory hcanges are needed to go beyond Public Law 94-142 and then develop mechanisms for meeting those requirements; and the

THRID PHASE WILL BE THE DEVELOPMENT OF NEW RULES AND REGULATIONS TO EXPAND OUR COMPREHENSIVE PROGRAM AND ASSURE THAT HANDICAPPED CHILDREN ARE RECEIVING QUALITY EDUCATION.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE I WANT TO THANK YOU FOR THIS OPPORTUNITY TO EXPRESS MY CONCERNS ABOUT THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT.

TESTIMONY ON
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

Before

SUBCOMMITTEE ON HANDICAPPED
HUMAN RESOURCES COMMITTEE
U.S. SENATE

BY

STATE REPRESENTATIVE TOM C. MASSEY
and
STATE ASSEMBLYMAN ALBERT BURSTEIN
for

THE NATIONAL CONFERENCE OF STATE LEGISLATURES

JUNE 22, 1977

Mr. Chairman, I am Representative Tom Massey. I serve as Chairman of the Education Committee in the Texas House of Representatives and as Chairman of the Education Committee of the National Conference of State Legislatures. I am appearing here in both capacities together with Assemblyman Albert Burstein, Assistant Majority Leader in the New Jersey General Assembly and a Member of the Education Committee of the National Conference of State Legislatures. With your consent, we are submitting the following written testimony for the record.

The unmet educational needs of handicapped children are substantial. About 1 million ages 3 to 21 are not receiving any education. At least 2 million are enrolled in school but are not receiving any special education. And many who are provided special education need greatly improved services.

Disparities in special education services are widespread, greater perhaps than in any other area of public education. Schools in middle class suburban communities have used their wealth, parent power, and educational leadership to develop the highest quality special programs generally available. Schools in isolated rural areas and poor central cities, however, have lacked many of these resources and their programs for handicapped children show it: in most cases, only a small percentage of handicapped children are served and those who are frequently lack the benefit of skilled diagnostic services and a wide range of special instruction.

Almost all schools need more personnel who are trained to work effectively with handicapped children and their parents. Most regular classroom teachers and administrators have had little or not training in special education. Skilled diagnosticians are generally available in the Northeast and the Far West, but are in scant supply throughout large parts of the Southeast and in some areas of the Midwest. Many school districts are unable to obtain diagnosticians and other specialists except by hiring prohibitively expensive private or university consultants.

Further work is also needed on the machinery which protects the educational rights of handicapped children. Due process machinery tends to be cumbersome, slow and expensive. It works least effectively for those who need it the most -- the poor and minorities. As Milton Bydoff points out, "The due process system . . . provides mechanisms by which parental disapproval of locally-developed educational plans can be adjudicated. But this system depends on informed paretns who must have considerable personal (ego) resources and outside moral technical support, regardless of their income level." This support, however, is generally unavailable at a price the poor can pay.

Reforms are needed in the way we organize and coordinate the whole range of services which handicapped children need to benefit from special education. The existing service delivery system resembles a crazy-quilt. Agencies serving handicapped children frequently have no knowledge about what others are doing. Moreover, there are too many opportunities for bureaucratic buckpassing. Parents of handicapped children are frustrated by present arrangements for serving their children and in many cases rightly so.

Paths to Reform

The State Role. The need for reform in special education services is clear. The problem is finding the funding workable solutions. Most state governments began the search in the early 1970's after the P.A.R.C. and Mills decisions made it absolutely clear that the courts would no longer tolerate the public's historical belief that handicapped children could not or should not be educated.

State-local funding for the education of handicapped children has increased from less than $1 billion in 1970 to well over $4 billion today. No category of state-local school spending has ever grown by so much in so short a time. As a result, special education has moved in less than a decade from its traditional status as a very small public school program to the largest except for basic classroom operation.

Equally critical, state and local governments have made a major effort to afford handicapped children greater legal protection. Virtually every state has rewritten its special education code extensively, many adopting model statutes recommended by child advocacy groups. Some have redrafted their due process regulations several times. And there has been a concerted effort to eliminate common abuses in such specific areas as private school placements, accountability and pupil segregation.

The Federal Role. The federal role in reforming special education services until recently has been limited to essentially three areas: providing financial assistance for the treatment of severely and profoundly handicapped children in state institutions; professional development; and educational innovation. Federal outlays for special education net of set-asides during 1977 are approximately $469 million or no more than 10 percent of the total by all governments. The federal role, however, will expand greatly between now and the beginning of the 1978 school year.

The expanded federal role will result from the provisions of two statutes: Section 504 of the Rehabilitation Act and Public Law 94-142, the Education for All Handicapped Children Act of 1975. Under the provisions of Section 504, all state and local educational agencies receiving federal financial assistance must supply all handicapped children special education and related services suited to their individual needs, provided in the most normal classroom environment, and without charge to their parents by no later than September 1, 1978. State and local educational agencies which do not meet this deadline risk losing their federal school aid.

The requirements of Section 504 amount to nothing more than a federal codification of the civil rights that have been extended to handicapped children by the courts and most state special education statutes. The regulations for Section 504 are written in less than 3 pages and present almost no conflict with related state policies except in one area: the charges which a small number of states impose on parents with children in private school settings.

While Section 504 is a civil rights law, Public Law 94-142 is a financial assistance statute. Public Law 94-142 currently authorizes the federal government to assist the funding of state and local special education programs in amounts that increase from about $360 million in fiscal 1978 to over $3 billion in fiscal 1982. States which elect to participate in the program are required to assure that they will provide a "free appropriate public education" to all handicapped children between the ages of 5 and 17 by no later than September 1, 1978. Participants in the program that fail to meet this condition risk the loss of all federal funds provided to educate handicapped children.

Contrary to what some believe, Public Law 94-142 and Section 504 do not impose identical requirements. There are major differences between the laws in at least three areas. The most apparent is in substantive service requirements. While Public Law 94-142 requires individualized educational programs, specific supplementary services, and professional development programs, Section 504 does not. A second major difference is in the legal and administrative arrangements to be used in serving handicapped children. While Public Law 94-142 spells out due process arrangements in great detail, Section 504 relies only on generic due process mandates. Similarly, while Public Law 94-142 requires all educational programs of handicapped children to be under the "general supervision" of the state educational agency, Section 504 leaves virtually all such administrative matters to state and local discretion. And a third key difference is in sanctions. Under Public Law 94-142, federal sanctions for non-compliance run clearly to the state. Under Section 504, however, sections seem to be directed primarily against local educational agencies. We have requested clarification on these points from HEW's General Counsel.

State and local educational agencies clearly need every bit of help they can get in closing remaining gaps in special education service. "Full service" deadlines in most state laws come due even earlier than those in Section 504 and Public Law 94-142. Many states, however, believe that the goal of providing all handicapped children a free appropriate public education cannot be realized by 1978 unless the Congress amends Public Law 94-142 within the very near future.

The Congress can contribute materially to the goal of educating all handicapped children by 1978 only if it is willing to amend Public Law 94-142 in ways that will assure the following:

1. federal financial assistance is sufficient to make remaining gaps in special education funding fiscally and politically manageable at the state and local level;
2. an implementation process which will allow state and local school officials to follow administrative procedures established under state law to the maximum extent practicable unless there is compelling evidence that state procedures will interfere materially with the goal of providing all handicapped children an appropriate public education;
3. a positive relationship between the federal formula for distributing aid to local educational agencies and existing state efforts to overcome disparities in the quality of special education services; and,
4. an educational planning process that will address the individual educational needs of each handicapped child openly and with compassion.

Closing the Revenue Gap

Authorized funding for Public Law 94-142 in 1982 stands in excess of $3 billion. Appropriations for fiscal 1978 and 1979, however, are only $315 million and $485 million respectively, and are insufficient to overcome more than a very small percentage of the prevailing shortfall in special education revenues.

We believe that special education spending must increase by at least $3.2 billion before all handicapped children can receive a proper education. This estimate is derived as follows:

a. A conservative estimate of the proportion of handicapped children in the general population is 8.7 percent. The U.S. Bureau of the Census estimates that the population age 5 to 20 in the U.S. in 1975 was 62.8 million. Therefore, a conservative estimate of the population of handicapped persons in that age group is 5.5 million.

b. Preliminary figures on the child count for October 1976 indicate that 3.17 million children age 6 to 21 were counted as receiving special education. It appears likely that the count for February 1977 will reach a level sufficient to yield a 1977 aid-eligible population of at least 3.3 million.

c. Data are not available for the October 1976 child count for 6 to 17 year olds, the age group of handicapped children to which states must provide special education and related services by September 1, 1978, but the data for 6 to 21 year olds suggest that special education and related services must be available to approximately 2.2 million more children by September 1, 1978 to meet the mandates of P.L. 94-142.

d. Many research projects and state aid formulae estimate that the cost of educating a "typical" handicapped child is at least twice the per pupil cost for regular education programs.

e. The national average per pupil expenditure for public elementary and secondary education was $1,390 in 1975-76. This figure can conservatively be estimated to have increased by eight percent or about $1,500 for 1976-77.

f. The product of 2.2 million children times $1,500 is $3.2 billion.

It must be emphasized, however, that our $3.2 billion estimate of additional necessary outlays is much more conservative than most. State educational agencies, for example, believe that expenditures must increase by at least $4.5 billion.

Allowing for known federal appropriations, state and local governments would be required to increase their annual outlays for special education by at least $2.7 billion to meet the funding level we believe necessary to assure "full service" for all handicapped children in the 1978-79 school year. Making matters worse, the need for additional special education revenues varies widely from state-to-state. About 10 states have told the U.S. Bureau of Education for the Handicapped that they could provide "full service" with less than a 100 percent increase in special education revenues. Most have indicated that they would need an increase ranging from 100 to 200 percent. And the 10-to-15 states with the least developed services have stated that they will require an increase of 200 percent or more.

Nationally, overcoming the current shortfall in special education revenues could require an increment for public school spending about as large as the total annual increment for all public education spending between 1975 and 1976. Or viewed another way, it could require many states to increase their effective tax rate for public schools by 5-to-20 percent. Voters, however, have made it unmistakably clear that they do not want and will not support higher school taxes.

The signs are numerous. At least 38 states have been forced to adopt statutory controls on the growth of local school district budgets and many of these limitations are being strengthened. Within the last several years, all but one major effort to increase state taxing authority for education has been resoundingly defeated and the one exception, New Jersey's new income tax, was amended almost as quickly as it was enacted to insure that the proceeds would be used for local property tax relief. Referendums proposing additional sales of school bonds have been turned down at a rate of 40-to-50 percent every year since 1970. And unlike a few years ago, surveys by the Gallup organization and others show that the percentage of the public who believes inadequate funding is a serious educational problem is both small and falling.

Public unwillingness to support higher school taxes almost certainly will place many state and local education policymakers under a great deal of pressure to eliminate the special education revenue gap by reallocating funds from other programs. One can only speculate on the outcome. It is very clear, however, that the consequences of reallocation should not be taken lightly. The experience of Massachusetts is a case-in-point.

Massachusetts has financed its special education programs since 1974 by guaranteeing each local city and town up to 110 percent of the state average cost of educating a handicapped child. Funding for this program has been obtained, however, by freezing the amount of state aid available to reimburse general school operating costs. Indeed, between 1975 and 1976, general school aid actually experienced a very slight decline while state aid for special education went up more than $40 million. Naturally, this has brought about a material improvement in many special services. There is mounting evidence, however, that the fiscal squeeze on regular school programs has seriously compromised the value of this achievement in three critical respects.

First, teachers and other professionals serving regular school programs have not been provided sufficient time to interact properly with the rapidly mounting corps of specialists serving handicapped children. This has encouraged professional jealousy rather than cooperation. It has minimized the opportunity for regular classroom teachers to understand what specialists are doing. And as weatnerly and Lipsky point out in the Harvard Educational Review, the law has increased the risk that handicapped pupils will be stigmatized because it forces many handicapped children to receive services from specialists which, with proper funding, could be provided through regular programs.

Second, for teachers in regular programs to obtain assistance from specialists except to meet the needs 6f handicapped children. This has encouraged open hostility toward special education programs among some parents of non-handicapped children whose needs are being short-changed. And equally important, it has greatly exacerbated the long-standing problem of non-handicapped children being misplaced in special programs. Teachers faced with "problem-children," but lacking the resources to meet their requirements, rather naturally will be inclined to refer them to any other program. And somewhat ironically, the greater the press of referrals, the less likely it is that procedural safeguards will be effective in checking abuses.

Third, special education is viewed by many voters as the primary cause of all increases in local school taxes. And indeed, their perception is not altogether ill-founded. As general operating aid has declined or failed to grow in the face of inflation, many local school systems have been forced to raise their property taxes simply to maintain the quality of established regular school programs. Thus, there is a real prospect in Massachusetts today that steps may be taken in the near future to severely limit further increases in special education outlays.

State and local education policymakers very clearly are caught between the proverbial rock and hard place. They recognize their obligation to educate all handicapped children properly, but see no prospect of closing the current special education revenue gap form their own sources. Their only hope is a substantial increase in federal financial assistance under Public Law 94-142.

Recommended Federal Action on Funding

The National Conference of State Legislatures believes that the Congress can assure this additional funding only by changing the basis of the federal aid commitment from a budget authorization to a contractual cost-sharing arrangement of the type already in sue under the provisions of Title XIX of the Social Security Act. We recognize that an orderly federal budget process cannot stand widespread use of this device. Nonetheless, in this instance, we can see no alternative that will assure the necessary financial assistance. While many federal education programs enjoy support because states and localities are under no legal compulsion to provide them, Public Law 94-142 has no such advantage. Under present circumstances, those who are opposed to increased federal spending for special education have a powerful argument: the states must educate all handicapped children with or without federal assistance. And they are quite correct. The fact remains, however, that current promises to handicapped children are simply too large for the states to meet quickly or well without a substantial increase in federal aid.

With this situation in mind, we also believe that the Congress must eliminate the present plan to increase federal support for special education over a period of years. Public Law 94-142 in its current form calls for the federal government to support roughly 5 percent of all special education costs in 1978, 10 percent in 1979, 20 percent in 1980, 30 percent in 1981, and 40 percent in 1982. The fact is, however, that states and local school districts are not permitted to phase-in special education services in a manner consistent with the phase-in of federal funding. Accordingly, we believe that the Congress should consider either of the following options:

1. an immediate increase in the rate of federal special education cost-sharing to 40 percent of state-local excess costs; or
2. a provision to hold all recipients of federal funding harmless from any of the mandates of Public Law 94-142 which transcend the requirements of Section 504 until such time as the federal rate of special education cost-sharing reaches the 40 percent rate presently envisioned for 1982.

Finally, any Congressional effort to deal with the special education funding problem must involve a review of the currently prescribed procedure for determining the number of handicapped children who are eligible to receive federal financial assistance. The amount of assistance provided under P.L. 94-142 in any fiscal year is contingent on the size of the federal appropriation, the national average per pupil expenditure, and the number of special education pupils who are aid-eligible. Thus, it will be impossible for the states to receive 100 percent of the $315 million appropriation for 1978 as the number of eligible special education pupils (3.3-to-3.6 million) multiplied by the average per pupil expenditure (about $1,400) generates an aid distribution of only $260 million. The chief cause of this low aid distribution is the method which P.L. 94-142 prescribes for determining the number of aid-eligible special education pupils.

The population of aid-eligible pupils is determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. While it was expected that this counting procedure would generate an aid-eligible population for fiscal 1978 of about 4.6 million handicapped pupils, the actual count appears closer to 3.6 million. This shortfall can be attributed to a variety of problems. One is the purely transitional difficulty of implementing a new census mechanism; another is the temporary limit on the number of aid-eligible children with learning disabilities. There are two other problems, however, which are more basic.

First, the current census procedure requires that special education students be counted on an "unduplicated" basis; that is, each child may be counted only once, no matter the number of his or her handicapping conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost and quality of special education services. Indeed, it not only fails to provide an incentive for improving special education services but also unfairly penalizes states which have opted to provide high quality services on their own initiative.

A second serious weakness in the current census method is its prohibition against counting special education students on a "cumulative" basis. Children may be considered eligible for federal aid only if they received special education on either October 1 or February 1. Children who received at any other point in the year are excluded. Accordingly, the current counting system imposes a harsh penalty against all states and local educational agencies which operate large speech therapy programs or other special education services which are not and need not be operated on a daily basis.

The exact magnitude of the undercount produced by the current census mechanism will not be known until later this year, but preliminary figures reveal that it is substantial. According to one survey of 35 states, the requirement for an unduplicated count resulted in 396,000 fewer aid-eligible pupils than would have been generated by a duplicated count. Similarly, the requirement for a non-cumulative census meant that about 380,000 students could not be counted for aid purposes.

Ideally, we believe that any new federal census of handicapped children should be both duplicative and cumulative and taken once a year, preferably in February when special education enrollments tend to be at their peak. We recognize, however, that an arrangement of this sort would pose two difficult problems. First, many states simply are not equipped at present to oversee a duplicative count. And second, a count in February produces data too late in the annual federal budget cycle to permit full consideration of state and local special education needs. Accordingly, we believe that a practical census compromise should provide for a cumulative count of all handicapped pupils who have received special education and related services by the first full school week during the month of December.

Use of State Administrative Procedures

Congress can contribute to full educational opportunity for all handicapped children not only by providing greater financial assistance, but also by allowing state governments the authority to operate special education programs in accord with their own administrative procedures unless there is compelling evidence that state procedures abridge civil rights. We believe that such discretion is required by the Constitution. And equally important, we believe that state and local school officials can do a better job of pursuing the basic objectives of Public Law 94-142 if they are not compelled to cope with even more new administrative procedures than have been imposed upon them by recent reforms in state special education laws.

Within the last five years, state arrangements for administering special education programs have been changed dramatically and repeatedly in virtually every area: due process, child find and evaluation, assignment of service responsibility and many others. The burden of all this change on special education personnel has been substantial, and imposing additional requirements from the federal level will not make the situation any better.

As a mounting body of scholarly research shows, the difficulties that school officials have faced in complying with new state special education requirements have been of the first magnitude. New state administrative requirements in some instances have raised so many new demands that special education administrators have been able to cope with them only on a catch as catch-can basis. A recent article in the Harvard Educational Review describes the situation in many states in its review of special education reform in Massachusetts.

> While not, for the most part, motivated by a desire to compromise compliance, school personnel had to formulate policies that would balance the new demands against available resources. To this end, school systems, schools, and individuals devised the following variety of coping patterns.
>
> They rationed the number of assessments performed. They neglected to conduct assessments; placed limits on the numbers that were held; and biased the scheduling of assessments in favor of children who were behavior problems, who were not likely to cost the systems money or who met the needs of school personnel seeking to practice their individual specialties.
>
> They rationed services by reducing the hours of assignment to specialists, by favoring group over individual treatment, and by using specialists-in-training rather than experienced personnel as instructors. They short-circuited bureaucratic requirements for completing forms and for following the procedures mandated and designed to protect the interests of parents. They minimized the potentially time-consuming problem of getting parents to go along with plans by securing prior agreements on recommendations and by fostering deference to professional authority.

To be certain, many administrative requirements in Public Law 94-142 are entirely proper. Due process of law, non-discriminatory testing, an accurate accounting of funds received are principles which no one questions. Many states, however, are deeply concerned by the specific requirements which

Public Law 94-142 imposes in three areas: (1) the special education appeals process; (2) standards for designating "surrogate parents:" and (3) arrangements for supervising special education services.

The Appeals Process. Section 615(c) of Public Law 94-142 specifies that any party aggrieved by the findings of an impartial hearing conducted by a local educational agency shall have the right to appeal such findings to the state educational agency. This requirement would compel about 15 states to make major revisions in their current special education appeals machinery. As one recent study points out, the agency authorized to hear special education appeals from local school districts is quite commonly other than the state educational agency. California, for example, uses its counties for this purpose; Nebraska uses a special education appeals board that is independent of its state educational agency; Florida uses a state appeals board empowered to hear persons aggrieved by the results of local hearings on all types of governmental matters. And so forth.

If it were apparent that these arrangements discriminated against handicapped children, one might fairly conclude that they should be changed. There is, however, no such evidence. Indeed, there is some reason to believe that they may make better sense than the arrangement envisioned by Public Law 94-142. Florida's use of one state forum for the review of all local government hearings has, for example, permitted the development of a highly professional appeals process. Similarly, California's reliance on counties has permitted the appeals process to be much more convenient to parents than if all appeals had to be heard at the state capitol -- many miles distant from the state's northern and southern boundaries. Accordingly, the National Conference of State Legislatures recommends that the Congress amend Public Law 94-142 in a manner that will permit states to designate an agency other than the state educational agency as the forum for the review of local administrative hearings,

The "General Supervision" Issue. Section 612 of Public Law 94-142 requires that states receiving its assistance must assign their state educational agency responsibility for the "general supervision" of services received by handicapped children under the provisions of their individualized educational programs. The intent of this provision clearly is to provide a single point within state government for overall planning, coordination and accountability for the education of handicapped children. The specific language of the statute, however, fails to give adequate consideration to alternative means of pursuing these objectives in several states where it will be impossible to use the state educational agency as the vehicle.

The obstacles to granting the state educational agency the power of "general supervision" are both constitutional and political. Florida's constitution assigns control over public education to local school boards, not the state educational agency. Louisiana's constitution divides constitutional authority over education between the state board of education and the chief state school officer. The constitutions of several western states contain so-called "Indian disclaimer clauses" which limit their right to supervise the education of many native Americans. Several states have no constitutional authority to intervene in the affairs of private schools. And some have been unable to change the organization of their special education delivery system simply for the lack of political support.

Proposed regulations for P.L. 94-142 attempt to resolve these legal problems by indicating that states can comply with the general supervision requirement through such arrangements as written inter-agency agreements. This undercuts the apparent intent of the general supervision clause, however, because such agreements frequently would be constitutionally voidable and unenforceable. Theoretically, of course, the federal government might insist that states alter their constitutions but this is neither politically practicable not necessarily advantageous to handicapped children.

Indeed, perhaps the greatest weakness of the present general supervision requirement is its assumption that centralization of authority is the best way to assure the educational rights of handicapped children. Experience in education and in many other public service functions, however, indicates quite clearly that this is not always the case. In fact, centralization of authority may lead to a special education service apparatus that is not more responsive, but less so -- and especially where the scale of the service delivery system is relatively large.

While we recognize the frustration of many parents with the fragmentation of the existing special education service structure, we believe that there are better ways to deal with the problem. Specifically, the present general supervision requirement should be amended to specify that the state educational agency shall be assigned responsibility for the general supervision of special education unless state education agency such authority may satisfy the general supervision requirement by enacting legislation which guarantees the following: first, standards for special education and related services which are uniformly applicable to all agencies and jurisdictions; second, a process for coordinating providers of special education and related services; and third, an "agency of last resort" with the power to resolve interagency disputes over responsibility for providing handicapped children special education and related services.

Surrogate Parents. Several states are also dismayed by a provision in Section 615 of Public Law 94-142 which prohibits employees of agencies serving handicapped children from acting as surrogate parents. The apparent intent of this requirement is to prevent agencies serving handicapped children from placing their own interests ahead of the children themselves. This is a reasonable safeguard in principle but as presently drawn has the effect of treating agency employees who are not directly involved in a child's education in the same fashion as those who are. We believe that this is unnecessarily restricting, and particularly so in the case of large agencies characterized by a high degree of internal division of labor and specialization. Suppose, for example, that a child's educational program calls for services through the federal Early Periodic Screening, Diagnosis and Treatment Program, (EPSDT) a program often administered through local welfare departments. The present law disqualifies a welfare caseworker from serving as that child's surrogate parent even in the event that he or she had nothing to do with the EPSDT program. Accordingly, we believe that the Congress should amend Public Law 94-142 to provide that a surrogate for the parents or guardian of a child shall not be a public employee involved directly in the education of the child.

An Equitable Distribution of Assistance for the Handicapped

Beginning with fiscal 1979, states participating in the Public Law 94-142 program must distribute 75 percent of their receipts under the Act to local educational agencies in relation to the number of handicapeed children receiving special education and related services. This formula, however, permits wealthy communities with high quality services to draw as much federal aid as poor communities with relatively undeveloped services. As such, it will direct federal funds not only without particular regard to the character of special education needs, but also in a pattern that will materially undermine overall state school finance equalization efforts, and especially so during the 1980's when federal funding may exceed $1 billion annually.

This problem, to be sure, could be overcome under the current provisions of Public Law 94-142 if state educational agencies were to exploit a provision which permits them to reallocate entitlements from localities that are providing "full opportunity" to localities that are not. This provision, however, permits reallication only on an ad hoc basis, requires states to acknowledge that they are not providing all children "full opportunity," and leaves state educational agencies open to the same charges of "favoritism" which led the Congress to substitute the current formula for the old Title VI-B grant application mechanism. Accordingly, we believe that the Congress should amend Public Law 94-142 in a manner that would retain the current machinery for distributing federal funds to local educational agencies, but that would permit states to assure against a disequalizing result by reallocating their own state aid for special education. The National Conference of State

Legislatures will submit proposed language on this matter in the near future.

A Workable Individualized Educational Program

Public Law 94-142 requires that there be an individualized educational program developed for each handicapped child. Experience with individualized educational programs in several states, however, indicates that their value for educational planning depends to a considerable degree on local perceptions of their legal implications. Local educational agencies which fear that such programs will be used as the basis for legal action "cover" themselves by writing them in terms which are judicially unassailable. Or, the process of developing an individual program becomes on adversary proceding with little if any educational benefit. The value of the individualized educational program as an educational instrument can be assured best by amending Public Law 94-142 to specify that it is intended as an educational planning device rather than as a contract for services or a guarantee of educational achievements.

Conclusion

The amendments offered in this paper are designed to create a workable program. Public Law 94-142 pursues a valid goal but also reflects compromises made during its passage which are not workable or beneficial to handicapped children. The anomaly of a federal "assurance" of full service with inadequate financing must be resolved. If it is not, the result will be widespread litigation and a further deterioration of state-federal relations in a field where harmony and cooperation are essential.

National Conference of State Legislatures

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July 6, 1977

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The Handicapped

Senator Jennings Randolph
Subcommittee on the Handicapped
Room 4230
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

Since 1971, approximately twenty-five to thirty states have developed and implemented changes in the funding formula for educational services. As you requested, we have compiled a list of the states that have made these changes and the date the formula becomes operational.

We do not have comprehensive information on the school finance plan of each state, but the enclosed copy of the Legislators' Handbook on School Finance Reform should give you a balanced view of the strengths and weaknesses of recent state finance reforms.

Sincerely,

Tom C. Massey

Tom C. Massey
Chairman
NCSL Education Committee

STATES THAT HAVE UNDERTAKEN SCHOOL FINANCE REFORM AND DATE OF PLANNED IMPLEMENTATION

Arizona - 1974-75

California - pending

Colorado - 1973-74

Connecticut - 1974-75

Florida - 1973-74

Georgia - 1974-75

Illinois - 1973-74

Indiana - 1974-75

Iowa - 1971-72

Kansas - 1973-74

Maine - 1973-74

Michigan - 1973-74

Minnesota - 1971-72

Missouri - 1977-78

Montana - 1973-74

New Jersey - 1974-75

New Mexico - 1974-75

North Dakota - 1973-74

Ohio - 1974-75

South Carolina - 1978-79

South Dakota - 1980-81

Tennessee - 1977-78

Texas - 1974-75

Utah - 1973-74

Virginia - 1972-73

Wisconsin - 1973-74

Senator STAFFORD. The Chair invites Mr. Terry Herndon, executive director, National Education Association, to take the witness stand.

Mr. Herndon, we welcome you here. I have known long and favorably your organization. We only ask to the extent you can that you summarize so that other witnesses will have a chance to appear before we are put off the air.

STATEMENT OF TERRY HERNDON, EXECUTIVE DIRECTOR OF THE NATIONAL EDUCATION ASSOCIATION

Mr. HERNDON. Thank you very much, Mr. Chairman. I will endeavor to cooperate with that request for brevity, and not reiterate any of the points that have been made by the other witnesses who have appeared.

I will simply say that I represent 1.7 million classroom teachers. The people I represent do not operate the school districts. They do not manage the State educational agencies. They are the people who teach the children. They, like those who speak for the Council of Exceptional Children, look up from that position.

We commend the Congress for their foresight, for their nobility in finally declaring war on the neglect of our handicapped citizens.

Looking at the role that our people will play in this project, I think I can confidently say that it is potentially the most pleasurable function we will perform in carrying out this act. It is also potentially the most miserable, inasmuch as the foot soldiers inevitably are those who become the sacrifice to the wars among the generals. As we can see in the testimony offered to this subcommittee, there is considerable dispute among those who are going to be making basic decisions about the opportunity that our people will have to work with handicapped children.

We are most anxious that the hope that is offered by this statute become a reality. It is not an overriding concern to us whether the resources necessary to do the job come from the Congress, from the State legislatures, or from local tax sources. But our experience does suggest that when the mandates come from the Congress and legislatures and local taxpayers indicate they are not going to provide the resources, there is but one option left, and that is the Congress.

We appear here seeking those funds. We think it is of the utmost urgency that this law be implemented in a way that the hope does become reality. That is going to require many things that cost a great deal of money. We think it imperative that the teachers who are going to be working with these children and young people have adequate inservice training. We think it imperative that there be compensatory adjustments in the number of children teachers are working with, so that newly found handicapped children and those historically neglected are not just added onto children already there. These teachers need adequate time for planning and technical assistance. We already are beginning to receive rumors from the field that there are local school jurisdictions and some State jurisdictions which are contending that the economic circumstances and the mainstreaming aspects of this statute diminish the need for special education teachers.

While we contend vigorously that we need more technical teachers, teachers need more help, it would be absolutely unconscionable for us, for the Congress, for this subcommittee, to sit idly and quietly by and allow that kind of evisceration in the intent of the law to occur. I would simply summarize by saying we would hope the Congress would see fit to provide more funds to provide better opportunity for success for our members.

We hope that you will also give whatever influence you can to requiring appropriate agencies to provide adequate oversight in implementation of this law. We think it is important that the National Institute of Education utilize its resources to develop and analyze the information that teachers need to adequately educate handicapped children, and that that information be made available in a usable form.

We think it important that the National Center for Education Statistics monitor the reality of the implementation of this statute so that a year from now and 2 years from now we will not have so much speculation about the real impact of the law.

We have submitted a written statement that covers many other issues. We will respond to your written questions, or at this time oral questions if you have them.

Senator STAFFORD. Thank you very much, Mr. Herndon. Your entire statement will be made a part of the record as if delivered here.

Senator RANDOLPH. I am sure that the witnesses who will appear after you will appreciate the brevity of your summarization, and its impact will not be diminished by its shortness, I can assure you.

Just one question at this time.

Your organization represents, as you pointed out, 1.7 million teachers. As you know, some have expressed concerns that the individualized education plans will be misinterpreted as a binding contract for educational achievement.

Would you care to comment briefly on this?

Mr. HERNDON. I can assure you we will be resisting that interpretation as the States develop their overall plans. We will be resisting it as local school authorities endeavor to pursue such a course.

We think it would be pedagogically unwise, from our perspective, and of course just intolerable in terms of the roles that our members play. I would not want to see planning sessions for IEPS turned into processes where teachers have to have legal representatives or union representatives to protect their jobs from potential hazard. We want this planning activity to be one that goes forward in good faith and focuses exclusively on the well being of the student. We think that opportunity would be seriously undermined if these were to be binding and enforceable contracts.

Senator STAFFORD. Thank you very much sir, for the committee and myself. We very much appreciate your being with us this morning.

Mr. HERNDON. Thank you.

[The prepared statement of Mr. Herndon accompanied by responses to questions submitted by Senator Randolph follow:]

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NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4000
JOHN RYOR, President
TERRY HERNDON, Executive Director

STATEMENT OF THE

NATIONAL EDUCATION ASSOCIATION

ON PL 94-142

THE EDUCATION OF ALL HANDICAPPED CHILDREN ACT

BEFORE THE

SUBCOMMITTEE ON HANDICAPPED

OF THE

SENATE COMMITTEE ON HUMAN RESOURCES

PRESENTED BY

TERRY HERNDON

NEA EXECUTIVE DIRECTOR

JUNE 23, 1977

Members of the Subcommittee, I am Terry Herndon. I am Executive Director of the National Education Association, representing 1.7 million teachers. We appreciate this opportunity to share with you the concerns raised by many of our members over the Education for All Handicapped Children Act.

NEA has a longstanding commitment to the best possible public school education for handicapped children, and we are pleased that the Congress and the courts are now responding to the needs of handicapped children. NEA supports these efforts and was proud to play an active role in helping PL 94-142 on its path through the legislative process.

We applauded the enactment of PL 94-142. We affirm the obligation of the public schools and public school teachers to provide wholesome educational experiences for all children, handicapped and otherwise. We don't see how anybody can oppose this. But we believe that Congress must do more than merely proclaim a responsibility. It should also give substance to the hope it offers by helping the people who labor in the vineyard to do the job.

Unfortunately, we can't talk to you about quality and equality of education without talking about money--and that's something that is in short supply in school districts around the nation. School districts are confronted by a fiscal crisis created in part by an eroded tax base at the local level, inflationary costs, and solid taxpayer resistance to ad valorem property taxes for schools.

Local school districts all over this country are cutting programs because of a shortage of funds. PL 94-142, as well-meaning and necessary as it is, adds awesome new responsibilities which demand even more funding from state and local school districts to meet new federal mandates.

Congress has now imposed a new spending obligation on school districts which are already approaching bankruptcy. Full implementation of PL 94-142 will cost billions of dollars; and Congress is not offering nearly enough to help states and locals provide the services which are promised by the law.

As best we can tell, the formula for funding the state grants for education of the handicapped was drawn from theory and not experience. It in no way reflects the history of educating the handicapped. Because of its arbitrariness, the formula is totally inadequate.

Our greatest concern is the five percent first-year authorization. Projected average per-pupil expenditure nationally for school year 1976-77 is $1350. Assuming that that figure doesn't alter much for next year, the five percent that would be added on for each handicapped child comes to less than $70. I submit that $70 is going to provide blessed little in the way of specialized educational services to a handicapped child.

If the intent of the law in providing the five percent were only to enable state and local education agencies to seek out and diagnose handicapped children in the first year of the law's operation, it might suffice--barely. But it is our interpretation that the law contemplates not only preliminary identification of handicapped children, but also the initiation of remedial programs and services for them.

Further, those programs and services which are supposed to be financed by the $70 per child are going to be of the most expensive sort. The law's priority on first meeting unmet needs implies that the initial programs will have to be brand new ones--with all that that entails in terms of facilities, equipment, and personnel--since presumably there are currently no programs for these target children.

We recommend that funding to the states be set at 40 percent from the outset of implementation. Although we are unconvinced that even that yield of approximately $550 per child is fully adequate, it is a more realistic figure for designing and implementing effective programs.

I don't want to be a naysayer, but I would like to point out some pernicious effects that gross underfinancing will have on the promise of PL 94-142. Low funding will force state and local education agencies to choose from a variety of undesirable alternatives. At worst, they could refuse to participate in the program at all. On the other hand, they can compensate for inadequate federal funding by cutting other services, laying off teachers, and slashing other programs which would undermine the quality of educational services provided for all children.

Such cutbacks in school programs will surely generate hostility and outrage in the parents of normal children, parents of handicapped children, and teachers toward this noble effort which the Congress undertook in the best of faith. What the Congress has endeavored to do might well boomerang and turn out to be counterproductive unless the Congress walks a fuller mile to carry out its promises.

And that fuller mile has to include money. Money is the only thing that is going to mitigate the burdens of implementing the law as written.

Money is needed to adjust class size so that each child can get the attention he or she needs in a near-normal situation. After all, adding three or four handicapped students to a class that's already too big--say 37 or 38 students--is going to create enormous problems for both handicapped and nonhandicapped students and their teacher.

As this law becomes operational, technical assistance and special expertise will be needed. There will have to be resource people available to assist regular classroom teachers in designing and implementing instructional programs for handicapped students, and for integrated classes.

Yet we have indications from various parts of the country that school boards are, ironically, considering the enactment of PL 94-142 as an excuse to fire special education teachers. The twisted logic for this startling conclusion is that since handicapped students are to be mainstreamed, or placed into the least restrictive environment, the regular teachers will handle them, and, therefore, special education teachers are a frill. I know and you know that this was not the intent of Congress, but I can assure you that it will happen. It's a lot like instituting a health education program in the schools and then firing the nurses and other health specialists.

Probably the biggest and most important remedy that money can provide is in the area of teacher training. A critical component of effective teaching programs is, of course, adequate, fully trained staff. The law so states and requires that state plans provide for training of teachers and diagnostic personnel in instructional procedures and methods.

But this law earmarks no funds for such training. What is funded, through another manpower development program, is some $31.5 million--which is projected to provide preservice training in special education for fewer than 1200 individuals. Those 1200 folks are hardly going to be able to serve a handicapped student population estimated at well over eight million.

Consider also that much specialized pretraining has always been required to become fully qualified in the area of teaching those with any one of a number of handicaps--hearing or vision impairment, orthopedic problems, and the like. For example, 1974 Florida certification procedures required those preparing to teach the hearing impaired to take 24 academic course hours in addition to basic degree work; those preparing for the visually impaired needed 18 extra hours. It takes much study--and therefore time and money--to become a qualified special education teacher. This law suggests that teachers with no special training will be asked to deal with a multiplicity of handicaps, provides little help in training, and permits school boards to discharge special teachers who might help.

It is obvious to us that, before both first priority and second priority handicapped students are served by the law, regular teachers must learn what they need to know to teach handicapped students. Preservice teacher education up to now has not been designed for this purpose. And so inservice education is absolutely necessary if programs and services are to meet the needs of handicapped children.

Funds budgeted for this type of inservice training in special education for Fiscal '78 amount to some $8.5 million to provide training for not quite 13,000 regular classroom teachers. A school district the size of Philadelphia has about 13,000 teachers. In New York City, there are around 51,000 classroom teachers. And there are right around 2.2 million teachers nationwide--most of whom presumably will be affected by the scope of PL 94-142. Most of them need training.

According to my arithmetic, that $8.5 million to train 13,000 teachers works out to about $650 per teacher. Applied to 2.2 million it yields $4 per teacher. Yet I noticed in The Washington Post that our government is considering giving $2.1 million to Zaire to train the teams to operate the ten M60 tanks we're selling them. With four-member tank teams, we're spending more than $50,000 each to train

Zairians to run a tank. I've never manipulated a tank but I have taught in America's classrooms, and I tell you that I deeply believe that teaching children successfully is the more difficult and is infinitely more valuable.

We believe that inservice training for all regular classroom teachers is absolutely essential so that the law will be fulfilled. We also believe that such active classroom teachers should be involved in the development of training programs so that programs are pertinent to their needs and anxieties about teaching the handicapped and the non-handicapped simultaneously.

Such inservice training for teachers of the handicapped could become the raison d'être for the newly authorized Teacher Centers program. This program, which is designed to provide on-site, teacher-run, career development programs for teachers, will be tooling up in Fiscal '78. The Teacher Centers could prove their worth and provide valuable aid to teachers who are preparing to deal with extensive requirements of PL 94-142.

Due to the law's priority on meeting unmet needs, state and local education agencies will be forced to expend meager available resources for tangible and observable obligations to the law. This means neglect of the training function. This is no more and no less than trickery of the public. How are we going to meet unmet needs if we don't have people who know how to meet those needs? It is totally illogical to contend that existing unmet needs can be met without putting up the money to equip people to fill those needs.

Yet state and local resources are not available to provide this training. Federal monies must fund these essential activities or else they will not be funded.

One suggestion might appear too simple and too self-serving, but if all funds which are appropriated were earmarked for the employment of additional teachers or the training of teachers, then this would have to result in smaller classes, release time for training, additional resource teachers, or other personnel who would be free to directly assist handicapped students.

Let me throw out one last money matter for you to consider. Even assuming that programs and training were adequately funded, we still have the problem--not addressed by the law--of architectural barriers. At some point there will need to be some capital outlay for remodeling.

In closing, I offer a few observations about the oversight of the Education of All Handicapped Children Act. As PL 94-142 is put into effect, close monitoring will be needed. The NCES should be assigned to compile appropriate statistics on numbers of students served and unserved, types of handicaps serviced, costs of services and programs (including facilities, personnel, and so forth), and other aspects of fulfilling the law. NIE should be charged with carrying out appropriate research regarding methodology and techniques, and, even more important, with disseminating useful, understandable data on effective methods of teaching the handicapped. Such activities are appropriate for NIE and were the reason for which NIE was established.

But NIE, in its brief history, has typically not produced the kind of meaningful results that directly assist the teacher in the classroom. We believe that education of the handicapped is an area which needs much such research and dissemination, and that NIE should direct its attention to this field.

I cannot emphasize strongly enough that it's the teachers who will or will not fulfill the promise of this law. The officials in the Office of Education will not teach the children. The chief state school officers and the district administrators aren't going to teach the children. At the bottom of the bureaucratic pyramid are the teachers who must achieve your declared purpose. We as teachers accept the responsibility to do the best we can. With proper help and support, we will rejoice in the challenge. But as it is going, it looks as though we will once again get the responsibility but little help, little support, too little money, and no authority. Most seriously, we will likely reap the criticism which results from the inadequate results which follow.

Nonetheless, I want to assure the Congress that we share its commitment to the aims of the Education of All Handicapped Children Act. Even more, we want success. But we see many problems which, if not alleviated, will make success improbable. Chief of these problems is money. I submit that if we want the job done right, we have to do one of two things: accelerate the spending, or decelerate the doing. We prefer the former. If we proceed at currently authorized levels for currently authorized activities, we fear the noble effort will die of malnutrition.

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GOVERNMENT RELATIONS

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JOHN RYOR, President
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TERRY HERNDON, Executive Director

July 19, 1977

The Honorable Jennings Randolph
Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Chairman Randolph:

We appreciate the opportunity to present further views for your Subcommittee's consideration as you continue your examination of issues involved in education for the handicapped. Terry Herndon has asked me to provide answers to your specific questions, which I'll address in the order in which they were raised.

1. Several of our state affiliates have provided some inservice training and/or designed publications to help teachers carry out their functions under PL 94-142. These activities have been basically consciousness-raising to alert teachers to the implications of this new law, including a few instances in which the focus has been on IEPs.

As for specifically training teachers to deal with the individualized education plan required by the law, we take the position that local and state education agencies have the primary responsibility for providing meaningful inservice training programs. We see this whole concept as a problem area because of the probable lack of resources to provide such inservice training.

The most serious difficulties that we anticipate are money and time: money for the school district to provide teachers with the additional help they'll need to prepare and carry out the IEP's, and time to give them this assistance without detracting from time spent on other teaching functions. In addition, there is a question as to who is the teacher to be involved in the IEP? the receiving teacher? the special education teacher?

2. We completely support the Teacher Center program, and only wish that it would be adequately funded. However, the very limited funds being appropriated for Teacher Centers make it impossible for it to fulfill all of its promise. We are urging our affiliates to consider the

requirements of PL 94-142 in designing the Teacher Center proposals, as it is one component of the inservice training needs of teachers. Moreover, the Centers will not be operational in time to help with the initial impact of PL 94-142. We insist that teachers must be trained to implement PL 94-142 before the handicapped students are placed.

3. According to information provided by Student NEA, our preservice affiliate, and by recent college graduates, the colleges of education are not preparing teachers to deal with handicapped students or with the requirements of PL 94-142. We will do what we can to encourage the teacher preparation institutions to institute meaningful programs. Student NEA is urging its members to look into special education as a career choice.

4. Given the history of school boards which are financially strapped who look to the so-called "frills"--such as special education teachers--to make budget cuts in program, we fear that riffing of these teachers may occur. We have had inquiries from our special education teachers, most notably from several in Indiana, indicating that they face this spectre.

I hope this information is useful to you.

Sincerely,

Stanley J. McFarland

Stanley J. McFarland
Director of Government Relations

cc: Terry Herndon

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Senator STAFFORD. The Chair will next invite Dr. Robert Benton, State Superintendent of Public Instruction, Iowa Department of Public Instruction, Des Moines, Iowa; accompanied by John W. Adams, Director, Federal State Relations, on behalf of the Council of Chief State School Officers.

STATEMENT OF ROBERT D. BENTON, ED. D., SUPERINTENDENT OF PUBLIC INSTRUCTION, DES MOINES, IOWA, ACCOMPANIED BY JOHN W. ADAMS, DIRECTOR, FEDERAL-STATE RELATIONS, COUNCIL OF CHIEF STATE SCHOOL OFFICERS

Dr. BENTON. Senator Stafford and members of the subcommittee, ladies and gentlemen, it is a real privilege for me to have the opportunity to present some thoughts and ideas on Public Law 94–142 at this particular time.

As near as I can gather in the list of witnesses today, I am perhaps the only individual who is responsible for the implementation and administration of this program at the State level. That in and of itself is important, but I think I do bring a perspective to this situation that many others may not be able to appreciate, and have as much perspective as I do here.

I do represent the Council of Chief State School Officers, but also I come here as the State Superintendent of Public Instruction from the State of Iowa. I am appreciative of Congress passing this particular piece of legislation. It sets forth a national priority and a national set of objectives that I concur with, and in the State of Iowa, concurred with in 1974 when it passed very comprehensive legislation in this particular area. I want to recognize that.

I would also want to bring a perspective to this particular committee that has not been enunciated as carefully and forcefully as we might in this particular circumstance. That has to do with what really is the proper role of the Federal Government in educational matters of this type, and how that particular role should be linked with State responsibilities and State circumstances.

Being a chief State school officer, I think I would want to recognize that through the years education has been recognized as a State function, from the constitutional point of view, and certainly this has been traditionally affirmed in a number of court cases. I think it is important that we recognize that.

Just last week, the Education Commission of the States held its 11th annual meeting in New York City. At that particular time that group did adopt a policy statement that relates to Federal-State relationships in education.

I would like to very briefly explain "one, two and three" for you. In that particular statement, one in which I concur, I think it was pretty well recognized that the Federal role could very well be that of enunciating national goals, objectives, and priorities in education.

Second, to supplement and complement the State efforts, in an effort to attain those goals and those objectives and priorities.

Third, to recognize the differing needs and problems among 50 States, extra-jurisdictional territories, and to recognize there are differing capacities to meet those needs. Hopefully also to recognize their different structures and laws of the States to fulfill educational needs and responsibilities.

It is in this kind of context that I think we have to examine this particular piece of legislation and other pieces of legislation that Congress may wish to pass.

I would submit to you—my testimony discusses this in some detail—I would submit to you that Public Law 94–142 presents somewhat of a dichotomy as we take a look at that particular circumstance. Certainly the stated purposes—providing appropriate educational programs to all youngsters—fits into the national goals, priorities, and objectives concept as set forth in that particular statement.

I would also submit, on the other hand, that the prescriptiveness of the law, the prescriptiveness of various sections of the law, violates the concept of differing needs and problems of the States and their capacities to respond. It is to those circumstances that I think we need to address some of our thinking this morning.

I would recognize very definitely the positive aspect of 94–142. I would list them one, two, three, and four.

One, every handicapped child does have a right to a special education program and services in a regular school environment to the maximum extent possible.

Two, special education programs and services should be provided at no cost to parents.

Three, there should be a nondiscriminatory evaluation process. This is a very important concept that I think needs to be stressed.

Four, the right to a due process of law.

These are generally recognized circumstances, and in my opinion Public Law 94–142 does an admirable job in setting forth those particular circumstances.

I would point out, however, that the restrictiveness of Public Law 94–142 does present problems in this area, though. As we try to implement this law at the State level, certainly we are finding some of these circumstances that make it very difficult to do this. Again, I must stress, that I do not know anybody at the State level, certainly none of my counterparts as chief State school officers, that doesn't recognize and have a strong commitment to meeting the needs of the youngsters, and I would not want anything I have to say from this point to be interpreted as backing away from that concept.

I think the facts do remain that we in the 50 States have some problems in implementing this law, however. I want to brush on them. Most of these points have been made.

No. 1, one of the big issues has to do with the mandate in the law that we must have full implementation of programing for children ages 3 to 18 by September 1, 1978. In all candor, that is not going to be possible. It is not going to be possible to do that. Even in a State like Iowa, that has one of the most comprehensive special education laws, and where we have made a herculean effort, in my opinion, both in terms of implementing programs, financing those programs and everything else, and we are going to have trouble living up to that mandate. We will try. It is not that we don't want to do it.

When it comes to moving from a given point in Iowa, 30 percent in 1975, to the point of 100 percent of meeting those needs, you do not do that over night.

In the 2 years our law has been implemented, we have gone from 30 percent to 70 percent, and we hope to have 100 percent by 1980.

I would suggest to you that the law should be amended in some way to recognize that an implementation plan needs to be developed on a State-by-State basis and that would recognize the status quo of each of the States.

In conjunction with the Office of Education, or some appropriate governmental agency, an implementation plan could be developed, and that State could make its commitment that way.

Second, the area of Federal financing. I guess I think the Federal Government ought to put its money where its mouth is. If it is going to really mandate these types of things, mandate all these circumstances, it has the responsibility, in my opinion, to share a reasonable burden in that particular area.

The phase-in funding that was outlined in that law of 5 percent, 20 percent, 30 percent, 40 percent, in my opinion gets money at the wrong end of the spectrum. Much of that money needs to be provided to States in trying to jump from that 25 to 30 percent implementation to 100 percent implementation. The Federal Government needs to maintain that level, in my opinion, that partnership. It seems to me that is a situation that needs to have some concern.

The third issue is the counting of handicapped children. I would concur with Representative Massey from Texas that any time that you use a specific date on which to count children, there are an awful lot of kids that fall through the cracks, that are not counted or are counted afterward.

I would suggest some consideration be given to changing that counting procedure.

I see no reason why, if you have a multiple handicapped child, that that child may be counted once, twice, three times, depending on the type of program needed for that child.

Again, I think that is a reality of the situation, and on the State level, we ought to be in a position to deal with. It seems to me that is an important issue.

No. 4, the ultimate responsibility of the State education agency, assuring that all children are receiving appropriate programs.

We, in Iowa, have no problem with that. I, frankly, by statute have that kind of authority. How well I exercise it is open to question. But I would, I guess, concur with the others. Let the State determine that. After all, the States have responsibility of determining how they are going to deliver educational programing to the youngsters, and whether it is in public schools, State institutions. Whether it is under the supervision of separate State agencies, it seems to me that it is an appropriate function of the State to determine that and one that ought to be involved.

No. 5, I would concur with the previous people on distribution of Federal funds. Again, this concept of equity within the State is a very important one. There have been several Federal court cases that have dealt with equity of States. Last year, my State happened to be a recipient of a grant of $210,000 where we are conducting a study of how to bring equal educational opportunities to the children of our State, and we are in the process trying to develop financial formulae to do this.

It seems to me, again, that we ought to have the flexibility to work those particular funds into our equity formula. I realize there is a provision in law that says once a State can certify that it is serving 100 percent of its handicapped children, then the Commissioner of Education may give the State the opportunity to blend in these Federal funds with State and local funds.

I think it is something we need some flexibility on.

Also, the issue of individual education program has been touched on. I will not talk to that other than to point out that it is a legal bombshell. I want to correct a previous witness' statement here. I know of no local education agency or State education agency or agencies that are contending it ought to be a legally binding document. I think they are taking the same position the teachers would take in this particular area, that it should not be a legally binding document, but that it should be a prescribed program that is going to try to meet individual needs of youngsters.

A seventh point. I am a Presidentially appointed member of the Commission on Federal Paperwork. As such, we have been conducting hearings for the last 2 years. We go out of existence in October of this year. I would want to point out to this committee and others, that if you do not watch it with this particular piece of legislation and other types of legislation that gets involved in this type of thing, the potential for excessive paperwork is almost incomprehensive. The very fact that all of us bring dozens of copies of our testimony, in which we say practically the same thing, is also an example of excessive paperwork.

Be that as it may, I appreciate the opportunity to testify here today, and share these thoughts and ideas with you.

I guess I only want to make one final point. Regardless of what you do with this particular piece of legislation, we are going to do our damndest to implement it.

Senator STAFFORD. Thank you very much for that final note. We did not have your statement in time to prepare questions. There may be some if you will respond in writing. I say that notwithstanding your presence on the President's Paperwork Commission, of which I am also a member. Apparently the paperwork in the Commission has been small enough so that I have not been notified of the meetings over the last 2 years.

Mr. BENTON. I was not aware you were a member.

Senator STAFFORD. The next witness is Donald Partridge, Texas Education Agency, Houston, Tex., on behalf of the National Association of State Boards of Education.

Mr. Partridge, we have 16 minutes left and three witnesses. We will give each witness 5 minutes.

[The prepared statement of Mr. Benton follows:]

Statement of

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on behalf of the

Iowa Department of Public Instruction, and
The Council of Chief State School Officers

Before the

Subcommittee on the Handicapped

United States Senate

on June 22, 1977

Regarding Public Law 94-142

The Education for all Handicapped Children Act

1001-C66308-6/77

STATEMENT BY DR. ROBERT D. BENTON
IOWA SUPERINTENDENT OF PUBLIC INSTRUCTION
TO THE SENATE SUBCOMMITTEE ON THE HANDICAPPED
HEARING ON THE HANDICAPPED
Wednesday, June 22, 1977

Senator Randolph, Chairman of the Senate Subcommittee on the Handicapped; members of the Subcommittee; staff members; advocates of appropriate educational programming for handicapped children; fellow educators; ladies and gentlemen. I am Dr. Robert D. Benton, State Superintendent of Public Instruction for the State of Iowa. I come before this Subcommittee not only in my official capacity as the Iowa State Superintendent of Public Instruction, but as a representative of the Council of Chief State School Officers (CCSSO), an organization which counts in its membership the state superintendents and commissioners of education in all the fifty states and the six extra jurisdictional territories. I want to express my personal appreciation to the members of this Subcommittee for the opportunity of making a presentation at this hearing.

In my role as a representative of the Council of Chief State School Officers, I shall try to convey the official position of that organization relating to P.L. 94-142. In addition, you all no doubt realize the Council has joined four other state-oriented organizations--the Education Commission of the States (ECS), the National Governor's Conference (NGC), the National Conference of State Legislatures (NCSL), and the National Association of State Boards of Education (NASBE) --in developing an indepth analysis of P.L. 94-142 and have collectively agreed to a set of recommended amendments to the law. These recommendations will also be "touched on" in my testimony.

In my role as the Iowa State Superintendent of Public Instruction, I shall attempt to reconcile the general overall state perspectives as exemplified by the collective concerns of the various organizations previously mentioned with our experiences and concerns in Iowa in implementing P.L. 94-142. To that end, I shall indicate where those experiences and concerns are in agreement and where they might vary somewhat.

As State Superintendent of Iowa and long before P.L. 94-142 was passed, I have been committed to improving special education programs and services for the handicapped children in my state. My extensive experience and efforts have been both rewarding and painful. My "reward" is exemplified by the thousands of additional handicapped youngsters in Iowa who are receiving for the first time an "appropriate" educational program. My "pain" is embodied by all of my frustrations and the lack of understanding on the part of many groups of people—legislators, fellow educators, taxpayers, and the general public—in the drive to fulfill the goal of appropriate educational programming for all youngsters, regardless of their handicapping conditions.

As a Chief State School Officer, I am appreciative of the efforts Congress has made to assist the states in fulfilling their responsibilities to handicapped children. P.L. 94-142 is a landmark piece of legislation which addresses the educational rights and needs of handicapped children. The law is comprehensive; it can be implemented; and, in my opinion, will ultimately achieve its purpose. There are issues concerning this legislation, though, that need to be refined in order to strengthen and facilitate its implementation.

Before proceeding with specific reactions to P.L. 94-142, however, I would like to explore in a general way with you some ideas and concerns that many of us who are state officials have relating to the proper role of the federal government in educational matters.

This very issue was discussed at some length just last week during the Eleventh Annual Meeting of the Education Commission of the States in New York City. Similar concerns have also been discussed, I am told, at recent meetings of the other state-oriented organizations.

Specifically, ECS members, in a Policy Statement adopted at that meeting, suggested that the federal role in education should be:

1. To enunciate national goals, objectives and priorities that may transcend the concerns of individual states or the capacity of states to resolve or respond to them acting individually;
2. To see that national goals, objectives and priorities are attained through federal policies which supplement and complement state efforts to meet the same needs and to give states assistance and incentives to meet national goals in the context of differing state circumstances.

To that end, the ECS Policy Statement suggests that the functions and goals of federal educational program initiatives should be:

1. To support the fulfillment of the national goal of equality of educational opportunity without regard to a person's race, sex, age, national origin, ethnic or cultural heritage, handicapping condition, economic status or geographic location;
2. To stimulate and support research in relation to efforts to improve education in the states and to support demonstration of effective strategies and programs related to issues of national priority;
3. To build an educated and informed citizenry for effective functioning of a democratic society.

All of this, of course, is predicated on the overriding concept that education is basically a state function. It follows then, that any federal education policy must be supportive of the states' efforts and must recognize and take into consideration:

1. The differences among states in education needs and problems and in the state efforts and capacities to respond to these needs and problems;

2. The differences among states in laws and structures for state policy development, planning, coordination, governance and regulation in education.

I realize that all may not agree with these points, but I present them as a basic premise from which I will discuss the merits and concerns that many of us have concerning P.L. 94-142 and its implementation.

I would submit that P.L. 94-142 presents a dichotomy in fulfilling those principles of state-federal relations in education as expressed in the ECS Policy Statement and generally subscribed to by other state-oriented organizations. On the one hand, the stated purpose of P.L. 94-142 which is "to assure that all handicapped children will have available to them . . . a free appropriate public education . . . ." responds in a very positive way to the enunciation of "national goals, objectives and priorities that may transcend the concerns . . . or the capacity of states to . . . respond . . . individually." On the other hand, the prescriptiveness of the various sections of P.L. 94-142 relating to the states' administration of the law, i.e., the provisions in "Entitlements and Allocations"--Sec. 611; "Eligibility"--Sec. 612; "State Plans"--Sec. 613; "Application"--Sec. 614; and "Procedural Safeguards"--Sec. 615; is almost unparalleled in federal educational legislation. This prescriptiveness certainly doesn't fulfill the goal of recognizing the "differences among states in education needs and problems and in the[ir] . . . efforts and capacities to respond to these needs and problems," nor does it take cognizance of the "differences among states in laws and structures . . . in education."

A further word about the positive aspects of P.L. 94-142 is in order. I join my colleagues in CCSSO and the other state-oriented organizations in applauding the following provisions of P.L. 94-142 which may be rightly labeled as "national goals, objectives and priorities" and which require all recipients of federal financial assistance to provide to each handicapped child:

1. special education and related services in the regular educational environment to the maximum extent feasible;
2. special education and related services without charge to his or her parents;
3. a non-discriminatory evaluation of his or her educational needs; and,
4. the right to due process of law.

Many state laws, including Iowa's, already contain these general provisions, and those requirements should be vigorously pursued.

Finally, it is to the negative issues--the extreme prescriptiveness of P.L. 94-142 and some of the unrealistic mandates of the law--that I will address my remaining comments. Specifically, I want to discuss with you the following general concerns:

1. The "full implementation by September, 1978" provisions of the law [Sec. 612 (1) (B)], which I consider an unrealistic mandate.
2. The federal funding authorizations for FYs 1978 through 1982 [Sec. 611 (a) (1) (A) (B) (i) (ii) (iii) (iv) (v)], which I consider to be inconsistent with the provisions listed in "1" above and which are hardly commensurate with the explicit mandates of the law.
3. The method of determining the "number of handicapped children" [Sec. 611 (a) (3)], which I consider to be unrealistic and unresponsive to the reality of actually providing "appropriate" educational programming to handicapped children.
4. The provision that the state educational agency shall have ultimate responsibility for "assuring" the adequacy of all educational programming for the handicapped even in other state agencies mandated by individual

state law to have a "piece of the action" [Sec. 612 (6)], which I consider to be overly prescriptive.

5. The "pass through" provision of federal funds to individual local educational agencies (50% the first year of implementation and 75% thereafter) [Sec. 612 (b) (1) (2) (c) (1) (2)], which I consider to be overly prescriptive and destructive to some states' efforts to achieve some semblance of financial equity among their local educational agencies.
6. The individualized educational program provisions [Sec. 602 (19)], which I believe to be potentially legally explosive.

In order for a state to receive federal funds, P.L. 94-142 mandates that "a free appropriate public education will be available for all handicapped children between the ages of three and eighteen . . . not later than September 1, 1978." The maximum age is increased to twenty-one by September 1, 1980. As indicated earlier, I consider this to be an unrealistic mandate.

Let me cite the Iowa experience to illustrate the point. When Iowa passed its "appropriate education" law in 1974 to be implemented by July 1, 1975, it was estimated that approximately 30% of those needing special education programs were actually receiving them. After an intensive effort and the infusion of many millions of local and state dollars during the past two years, it is estimated that about 70% of those in need of special education programming are now receiving it. Our goal, from the very beginning, was to reach full programming by 1980, and we intend to do so.

My point is this, though; Iowa is one of the few states that has such a comprehensive and all-inclusive special education law. And, Iowa is one of the few states that has increased its expenditure level so markedly. Yet, it is questionable whether I as chief state school officer will be able to certify that all handicapped children in the three- to eighteen-year age bracket will be in "a free appropriate public education program" by September 1, 1978, not because we don't want to nor because we haven't tried. The real fact is that a state does not go from a point of 30% to 100% overnight. It takes time; it takes money; it takes personnel; it takes facilities; and it takes an indepth understanding and commitment by a lot of people to make such strides. It is just not realistic to assume that such a goal can be achieved in so short a time. We in Iowa will certainly have made a herculean effort to comply, and, in my judgment we will probably be closer than the vast majority of the states in being able to conscientiously so certify, but it will be marginal.

How much more reasonable it would be for the law to provide flexibility to the states, in agreement with the proper federal agency, to develop a feasible timetable of compliance with a five-year period being the parameters. I predict that is exactly what will happen, anyway. Many states will not be able to comply, but they will certify that they do. The appropriate federal agency will, then, probably have to question some of those certifications. Several years of charges and countercharges will ensue, and energies and efforts of conscientious people will be spent on those activities rather than on "getting to the job" of providing appropriate educational programming for all handicapped students.

As a final thought on this subject, and as a lead-in to the next topic, I would suggest that the method of providing the federal funds to a state could be tied in some way to the level of compliance. For example, if a state is at the 50% compliance level, it could be provided with 50% of its full authorized entitlement.

The funding authorization provisions, as I indicated earlier, are, in my opinion, inconsistent with the "compliance" provisions discussed above, and are not commensurate with the explicit mandate of the law. Briefly stated, the funding authorizations provided for the federal share to be computed at the following rates on the "average per pupil expenditure in public elementary and secondary schools . . .": 5 per centum--FY 1978; 10 per centum--FY 1979; 20 per centum--FY 1980; 20 per centum--1981; and 40 per centum--1982.

This pattern of funding authorization, it seems to me, is not consistent with the needs of the states. As they move to achieve the two compliance goals--1978 and 1980--they will need massive infusion of funds FROM ALL LEVELS. It would seem reasonable that the federal government ought to become a full partner during these compliance efforts and, then, continue that full partnership once full programming is reached. I return to my general recommendations made earlier—the compliance requirements and the funding authorizations (and appropriations) ought to be closely related and coordinated, state-by-state.

I realize this position is slightly different from that taken by the Council of Chief State School Officers, which I represent here today, and the other state-oriented organizations. Their basic recommendation is that the full funding authorization be made available to the states immediately. I understand the basic rationale of the recommendation, but having just gone through a "crash program" of implementation in Iowa, I know that "too much" money "too soon" can be counter-productive. Thus, in my role as the Iowa State Superintendent of Public Instruction, and based on my experiences in this area, I feel strongly that, given proper planning, compliance and funding must be coordinated to produce the best results.

One final general observation is in order. In the past, the federal government has many times "laid on" the states a multitude of prescriptive program requirements. P.L. 94-142 is no exception. Yet, the dollar commitments of the federal government have been very minimal, to say the least. To put it very bluntly, the federal government should "put its money where its mouth is." If the federal government is going to mandate costly requirements, it should be willing to pay a reasonable share of those costly mandates.

Again, let me use Iowa to illustrate this point. In the academic year just passed, the rate of state to federal excess cost commitment in special education was 30 to 1. In the current projection for the 1977-78 school year, it will be 25.5 state excess cost dollars to one federal excess cost dollars. The same ratio would be evident for local excess cost dollars. When considering the federal mandates contained in P.L. 94-142, the federal financial commitment (one federal dollar for every 51 state and local dollars) can hardly be called a "reasonable" partnership.

The child count issue in P.L. 94-142 deserves attention. As indicated earlier, I consider this provision unrealistic and unresponsive to the reality of "appropriate" programming. It is feasible to acquire an enrollment count on a given day or days during the course of the year. However, the annual enrollment count could be conducted on a one-time basis and probably would be more feasible if conducted December 1, or early in January in relation to the ease of assimilating the information into federal budgets and state planning for financial resources.

In addition, there is a need to consider allowing a cumulative and in some instances duplicative counting for the generation of funds. Multi-handicapped children require extensive and costly program efforts. A speech handicapped, mentally disabled child requires a full cost effort in both providing the instructional program geared to meeting the child's speech needs and those necessitated by mental disability. To count this child only once generates a significant cost overrun in comparing funds generated in relationship to program needs.

Consideration should also be given to allowing the counting of children served during the course of the year in a block programming circumstance. Particularly in rural areas some speech handicapped children may be provided intensive terapy for a six-week period of time on a semi-annual basis and consequently may not be enrolled during the specific day or days of the actual counting of handicapped children. Hopefully, flexibility could be afforded in allowing the counting of children in circumstances such as this.

The provision in P.L. 94-142 that assigns to the state education agency the ultimate responsibility of "assuring" the adequacy of all special education programming will create considerable difficulty in some states whose constitutional or statutory provisions prescribe that agencies other than the state education agency are responsible for some segments of programming for handicapped children. The effort to centralize the supervisory responsibility with the state education is noteworthy, but the process of centralization does not necessarily quarantee effective and efficient administration. Consideration must be given to the total environment of the handicapped child encompassing the child's residential and educational needs. It may be more appropriate for other state agencies to assume the total responsibility for a child including the education of that child. Therefore, the law needs flexibility allowing supervision by state agencies other than the state education agency so that minimal standards for educational services to handicapped children are met. This could and should be monitored by the state education agency with sufficient provisions in the law to allow that monitoring to be effective. Probably, the best solution in this area is to let existing laws in the various states be the determiner rather than trying to mandate this federally.

Closely related to the "single state agency responsibility" is the surrogate parent provision. In my opinion, the surrogate parent provisions in the law should be modified. A surrogate parent assigned to a handicapped child should not be directly involved in the educational process of that child. However, there should be no concern inherent in a person serving as a surrogate parent who is employed by a state agency other than that providing the direct educational program.

The issue of the distribution mechanisms of the P.L. 94-142 funds, in relation to current funding formulae within states requires comment. Would it be reasonable to allow some flexibility in distribution of the federal funds in concert with state equalization formulas so long as the intent of the utilization of the federal funds was met? The states have the responsibility of affording an equal and appropriate educational opportunity for every handicapped child. Equal and appropriate opportunities cannot be provided if the funding mechanism is predicated on the basis of equivalent dollars for all. Rather, provisions should be made for placing dollars with the greatest need. States should be given latitude, not only with the utilization of their direct entitlements but also their flow-through responsibilities, so that the best utilization of the federal dollar can be assured. Each state has many gaps to fill, whether they be distributed on a geographic, rural-urban, or on a disability specific basis. Federal dollars could assist in filling the voids.

My last point addresses the individualized educational program (IEP) provisions in the federal legislation. There is great concern that the IEP could be construed as a legal, binding contract which could have judicial implications. Although assurance has been given that in the interpretation of P.L. 94-142 the IEP will not be considered a binding document subject to litigation, having that principle stated in an amendment to the law would provide the needed clarification and security.

As in any testimony of this type, a far disproportionate amount of time has dealt with concerns relative to congressional efforts. I would like to re-emphasize, however, that the positive aspects on P.L. 94-142 far exceed those negative issues. I have a very positive feeling about P.L. 94-142 and find absolutely no fault with the motivation and intent of its authors and proponents. We in Iowa, because of our existing state laws and our "head start" toward providing appropriate education programming to all handicapped children, will have comparatively few problems in implementing P.L. 94-142. However, like every monumental piece of legislation, there is room for added polish as viewed through the eyes of those of us who are charged with the responsibility of its implementation. I do not believe that anything that I have proposed would change the intent or magnitude of this vital piece of legislation, but would further the cause of total compliance on the part of states with the intent of its provisions.

Again, I am appreciative of this opportunity to present my views to this Senate Subcommittee and thank you in advance for any consideration that may be given toward their incorporation into legislative amendments. Thank you.

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of Public Instruction

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Alaska Commissioner
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A. CRAIG PHILLIPS
North Carolina Superintendent
of Public Instruction

WALTER D. TALBOT
Utah Superintendent
of Public Instruction

Executive Secretary
BYRON W. HANSFORD

August 10, 1977

Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

Dr. Robert Benton, Iowa Superintendent of Public Instruction, has asked me to respond to the Subcommittee's request of July for additional information regarding the specific problems in implementing P.L. 94-142 which we outlined in our testimony. The Council of Chief State School Officers (CCSSO) firmly supports the intent of the Education for All Handicapped Children Act to assure all handicapped children "a free appropriate public education." Our members are committed to the goal and are making a sincere effort to comply with the requirements of the law and the proposed regulations. However, the concerns expressed in our testimony have seriously threatened State implementation efforts and must be addressed through amendment to the Act if our common goal is to be achieved.

We have recently learned that our concerns are shared by the Bureau of Education for the Handicapped (BEH), the agency directly responsible for the implementation of P.L. 94-142. On July 14, 1977, BEH issued a request for proposal (RFP) entitled, Public Policy Program Related to the Implementation of P.L. 94-142, in which they requested the services of a contractor to communicate with education organizations and state-level decision-makers to identify and define the critical policy issues affecting the provision of a free appropriate public education for all handicapped children.

This RFP outlines policy issues that parallel our concerns. Reinforced by this recent BEH study request, and as States intensify their efforts to implement P.L. 94-142, we have become even more aware of the severity and extent of these concerns.

While compiling information with which to respond to your questions, we identified two BEH-sponsored research studies

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that have been recently completed, both of which also address the topics you raised in your July 1 letter to Dr. Benton. I am enclosing the final report of one study, State Profiles in Special Education for your information. This study was conducted by the National Association of State Directors of Special Education (NASDSE) and has resulted in a description of present State special education programs and practices. For each State, you will be able to assess information as to State special education legislation, regulations, and/or policy; financial, organizational, and administrative structures supporting the delivery of special education services; the numbers, ages, and handicaps of the children served; and due process procedures and current special education programs. This report is the most current and comprehensive description of State capability to respond with policy, procedures, and practices regarding P.L. 94-142.

A second study by the Management Analysis Center, Inc. (MAC) of Washington, D. C. undertook an indepth analysis of the capabilities of twenty-seven selected representative states to meet the information requirements of P.L. 94-142. That study found most States presently lack sufficient capacity to respond to the information and reporting requirements of the Act. MAC further formulated several recommendations to BEH. The preliminary MAC Study Report was delivered to BEH during July.

To address the State implementation problems, we have recommended that the Administration and the Congress modify P.L. 94-142 so as to:

> •Specify that the state educational agency shall be assigned responsibility for the general supervision of special education unless state law requires otherwise. P.L. 94-142 requires that states receiving its assistance must assign their state educational agency responsibility for "general supervision" of all services received by handicapped children under the provisions of their individualized educational programs.
>
> This requirement fails to acknowledge that many states cannot grant authority to any single element of government except by constitutional amendment. Presently, most state constitutions divide authority over special education among several governmental units, typically, the state educational agency, executive departments, under the governor, and local educational agencies.
>
> The aforementioned MAC study reported that, of twenty-seven states and outlying areas surveyed, only one state (Louisiana) had sole responsibility for the provision of special education services. Six states (Maryland, Massachusetts, North Carolina, Puerto Rico, Rhode Island, and Virginia) shared responsibility with two or three other

agencies; eleven states (Florida, Hawaii, Indiana, Michigan, Nevada, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, and Wyoming) cooperated with four or five such agencies; and eight states (Arizona, California, Idaho, Maine, New York, South Dakota, Texas, and Wisconsin) were required to share authority with as many as six public and private service agencies.

•Remove the separate authorization for appeals to the state educational agency as a component in the due process procedures. Several states (Florida, Nebraska, and Rhode Island, for example) do not provide for an administrative review by the state educational agency of hearings held at the local level. Persons dissatisfied with the outcome of local hearings have the right of appeal, but only to the courts or other state agencies. This arrangement in some instances is mandated by the constitutional powers of local educational agencies and in other cases by a judgment that the state educational agency is not the best possible point of hearing review. The important point, however, is that lack of an administrative appeal to the state educational agency in no way contravenes the principle of due process so long as there is access to the courts.

•Provide for duplicated and cumulative count of all pupils receiving special education during the first full school week during the month of February. The amount of assistance provided under P.L. 94-142 in any fiscal year is contingent on the size of the Federal appropriation, the national average per pupil expenditure, and the number of special education pupils who are aid-eligible. The population of aid-eligible pupils is determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. This procedure leads to an inaccurate child count (unrealistically low) because of two problems.

First, the current census procedure requires that special education students be counted on an "unduplicated" basis; that is, each child may be counted only once, no matter the number of his or her handicapping conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost and quality of special education services.

A second serious weakness in the current census method is its prohibition against counting special education students on a "cumulative" basis. Children may be considered eligible for Federal Aid only if they received special education on either October 1 or February 1. Children who received at any other point in the year are excluded.

•Direct the intention of the individualized educational program developed for each handicapped child to be an educational planning-device rather than a contract for services or a guarantee of educational achievements. Experience with individualized educational programs in several states indicates that their value for educational program planning depends to a considerable degree on local perceptions of their legal implications. Local educational agencies which fear that such programs will be used as the basis for legal action "cover" themselves by writing the plans in terms which are judicially unassailable. Or, the process of developing an individual program becomes an adversary proceding with little if any educational benefit.

•Eliminate the phase-in of federal contribution (from 5 percent for the fiscal year 1977 to 40 percent for fiscal year 1982), and authorize 40 percent of the national average per pupil expenditures multiplied by the child count beginning fiscal year 1978. The present phase-in provision fails to offer Federal financial assistance to the States at the time when they most need such assistance to begin and expand child find, screening and evaluation, personnel preparation, and programs to meet their September 1, 1978 responsibility for serving children aged three to eighteen years. Those States whose present service delivery capability is least-well developed most desperately need maximum initial assistance and support, even though the funding support from P.L. 94-142 will never be sufficient to offset the financial investment of the States.

States estimate that the State-local spending for excess costs of special education services to meet their P.L. 94-142 responsibilities will outstrip P.L. 94-142 funding by a factor of at least 15-1. In the State of Massachusetts, which is implementing a Comprehensive Special Education Law (Chapter 766) similar to P.L. 94-142, State-local spending for the excess costs of special education during 1978 exceeded Federal support by a factor of about 30-1.

•Specify that approval of a state plan by the U.S. Commissioner of Education for federal participation constitutes a contractual obligation by the Federal Government to pay to the state the percentage of cost authorized by the statute. While states that accept P.L. 94-142 funding must bind themselves legally to educate all handicapped children according to Federal rules, the Federal Government is under absolutely no legal obligation to appropriate one cent in return. This is unfair and it provides no political incentive for the Federal Government to fund P.L. 94-142 to the maximum extent authorized.

- Retain the 75 percent allocation for local educational agencies but authorize state to allocate Federal funds to local educational agencies in accordance with a uniformly applicable formula of their own creation which would permit consideration of such factors as the prevalance of special education needs and the ability of localities to support them from otherwise available resources. Beginning with fiscal 1979, states participating in the P.L. 94-142 program must distribute 75 percent of their receipts under the Act to local educational agencies in relation to the number of handicapped children receiving special educational and related services. This formula, however, permits wealthy communities with high quality services to draw as much Federal aid as poor communities with relatively undeveloped services. As such, it will direct Federal funds not only without particular regard to the character of special education needs, but also in a pattern that will materially undermine overall state school finance equalization efforts, and especially so during the 1980's when Federal funding may exceed $1 billion annually.

I trust this response to your letter to Dr. Benton addresses your questions and provides additional information of use to the Subcommittee. Once again, I want to assure the Subcommittee of the States' and CCSSO's support for the goal and objectives of P.L. 94-142. It is because of our desire to meet these goals that we raise those problems which we feel can jeopardize the P.L. 94-142 implementation efforts and cause its effect to be less than that desired. Thank you for this opportunity to express our views.

Sincerely,

John W. Adams

John W. Adams
Director, Federal/State Relations

STATEMENT OF DON PARTRIDGE, TEXAS EDUCATION AGENCY, AUSTIN, TEX., REPRESENTING THE NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION

Mr. Partridge. My name is Don Partridge. I am Associate Commissioner of Education for Special Education, Texas Education Agency.

Today I am to read the text of Joe Kelly Butler, chairman of the State Board of Education of the State of Texas. Mr. Butler sends his regrets. Due to an emergency, he was not able to be present to present the testimony today.

Mr. Butler's testimony is also part of the testimony from the National Association of State Boards of Education.

Since I am only a reader, I would appreciate it if the committee would keep the record open so that Mr. Butler, the State Board of Education in Texas, and the National Association of State Boards of Education might have additional opportunity to submit other testimony to the subcommittee.

Senator Stafford. Mr. Partridge, without objection, and there is nobody here to object but me, that will be done.

Mr. Partridge. In order to try to conserve as much time as possible, we have had an opportunity to read the testimony given yesterday by Lieutenant Governor O'Neill of the National Governors' Conference. We would basically agree with that testimony as we would the testimony just given by Dr. Benton.

Since my colleague, Tom Massey, presented testimony just before I did, let me try to fill in some gaps between our testimony. Basically we would say that Public Law 94–142 is a good law. It is a needed law. There are, however, a number of statutory concerns which need to be addressed. Mr. Butler's testimony basically deals with three general areas. The first area is the apparent untenable position that this law has placed the State department of education in conflict between Federal and State law. Mr. Massey referred to due process procedures, which is a concern we have in Texas; and I will not dwell on it.

The second part in this broad issue still relates to general supervision of the State education agency over programs operated by other State agencies. In Texas this basically involves three other State agencies: State Department of Mental Health and Mental Retardation, which operates the State schools for the retarded and State mental hospitals; University of Texas system, which operates a school for crippled children; and Texas Youth Council, which operates facilities and services for juvenile delinquents.

For a number of years in Texas the State education agency has provided leadership regarding the quality of education these handicapped children have received in these other State agency programs. We, however, have no authority over the funds, either State or Federal, appropriated to these State agencies or how these funds are expended. Neither do we have authority over the pupils these State agencies admit or dismiss.

Another possible implication of this section is that Congress is attempting to cause State education agencies to be responsible for coordination of certain Federal programs which rightfully are the responsibility of the Department of Health, Education, and Welfare.

An example is the 10 percent mandatory provision of services for handicapped children required as part of "Head Start programs." Are these services considered educational?

The second area of concern deals with the additional requirements in the education of handicapped children, mandatory dates, and proposed funding levels.

The law requires that all handicapped pupils between the ages of 3 and 18 by September 1, 1978, have a free appropriate public education available to them, and by September 1, 1980, all handicapped pupils ages 3 through 21 have a free appropriate public education available to them.

The law further stipulates that the first priority of service must go to handicapped pupils who are not receiving an education and the second priority is with respect to handicapped children, starting with the most severely handicapped, who are receiving an inadequate education.

The law is very specific about some of the requirements necessary for an adequate education: requirements of an individualized educational plan, physical education, and an array of services from a variety of related services personnel—many of whom are not now a part of public education.

The section pertaining to funding, section 611, "Entitlements and allocations," sets forth a time schedule of intended grant assistance starting with 5 percent for fiscal year 1978 and up to 40 percent for fiscal year 1982.

The problem here is that if State education agencies and local school districts are going to meet the new mandates of this law, the larger amounts of financial assistance are needed now—that is, between 1978 and 1980—and not after the program has been fully developed and is operational.

The third area of concern relates to a broad issue which affects the changing State-local school district relationships and impingements on education in general.

Public Law 94–142 sets forth in considerable detail the requirements for an individualized educational plan for handicapped children and, insofar as possible, the requirement that handicapped children be educated with non-handicapped children.

For more than 7 years the public schools of Texas have been moving in this direction. It is a long, slow process to develop the expertise, knowledge, and skills of special education professionals to be able to work within these requirements. It has been found to be a longer, slower process to effect this change in regular education.

An issue that must be faced is whether or not this law can require regular education to meet the demands of individualized educational plans as well as other appropriate education requirements for handicapped pupils who are served by and in regular education. A related issue that must also be faced is whether or not this law can require regular education to meet the demands of individualized educational plans as well as other appropriate education requirements for handicapped pupils who are served by and in regular education. A second related issue that must also be faced is whether or not this law causes State education agencies to establish another dual education program: one for handicapped children that has very specific appropriate education requirements and the other for nonhandicapped children.

I noted yesterday's testimony from Mr. Mizell from the American Friends Service Committee, South Carolina, who gave a rather detailed description of his attending a public hearing in his State. I fear if you ask many of the advocates of our State about a public hearing we held, they might give the same kind of testimony.

Our State board required that we hold 40 public hearings. They were indeed a real experience. But the point I want to try to make here is, we received a preponderance of public testimony primarily from our building principals, who are the local administrators on the front line. With a single voice, I think they were saying that here with this new plan, you are moving forward, we are expected to serve 15 percent of the population in special education. It is going to take 35 percent of our time and resources to do it, which certainly creates an imbalance in the educational program.

Mr. Chairman, we thank you for this opportunity.

Senator STAFFORD. Thank you very much, sir. We have a question or two. But we will have to ask them in writing, in view of our time constraints.

Mr. PARTRIDGE. Thank you.

Senator STAFFORD. We appreciate your appearing and helping the subcommittee. Your entire statement will be made a part of the record.

[The prepared statement of Mr. Butler with accompanying responses to questions submitted by Senator Randolph and the prepared statement of the National Association of State Boards of Education follow:]

Texas Education Agency
Austin, Texas

TESTIMONY ON PUBLIC LAW 94-142, EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

Presented to the Subcommittee on the Handicapped,
Human Resources Committee, United States Senate,
The Honorable Jennings Randolph, Chairman

June 22, 1977
Washington, D.C.

My name is Joe Kelly Butler. I serve as Chairman of the State Board of Education for the state of Texas and present this testimony in that capacity.

The Congress of the United States is to be commended for its foresighted passage of Public Law 94-142, "Education for All Handicapped Children Act of 1975," and for the Congressional commitment for full implementation of the provisions under that act.

I am confident that we as a nation have, with some faults remaining, a significantly more humane educational system than ever before. When has there ever been, for example, an educational system that would go to great trouble and expense not just to serve but to seek out all handicapped children so they might be given educational services appropriate to their needs?

Only in a great democracy like ours would the government and subsequently the citizens commit themselves to a public education system that attempted to provide education to all of its children no matter how handicapped and even go a second step in making a concentrated effort to try to locate all unserved handicapped children so they might have a free public education.

I WOULD LIKE TO LIMIT MY REMARKS TO THREE AREAS OF CONCERN. THE FIRST AREA OF CONCERN DEALS WITH WHAT APPEARS TO BE AN UNTENABLE POSITION IN WHICH PUBLIC LAW 94-142 HAS PLACED STATE DEPARTMENTS OF EDUCATION. SOME OF THE SPECIFICS IN PUBLIC LAW 94-142 ARE INCOMPATIBLE WITH STATE STATUTES. I CITE THE FOLLOWING EXAMPLE:

PROCEDURAL SAFEGUARDS

> SEC. 615(B)(2) WHENEVER A COMPLAINT HAS BEEN RECEIVED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PARENTS OR GUARDIAN SHALL HAVE AN OPPORTUNITY FOR AN IMPARTIAL DUE PROCESS HEARING WHICH SHALL BE CONDUCTED BY THE STATE EDUCATIONAL AGENCY OR BY THE LOCAL EDUCATIONAL AGENCY OR INTERMEDIATE EDUCATIONAL UNIT, AS DETERMINED BY STATE LAW OR BY THE STATE EDUCATIONAL AGENCY. NO HEARING CONDUCTED PURSUANT TO THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONDUCTED BY AN EMPLOYEE OF SUCH AGENCY OR UNIT INVOLVED IN THE EDUCATION OR CARE OF THE CHILD.

IN THE STATE OF TEXAS, AS IN OTHER STATES, THERE ARE HEARINGS AND APPEALS PROCEDURES ESTABLISHED AND IN OPERATION, BASED UPON SOUND STATE STATUTES AND POLICIES.

TO IMPLEMENT THIS SECTION WILL REQUIRE A STATE TO OPERATE A DUAL HEARINGS AND APPLALS PROCEDURE FOR THE PUBLIC EDUCATION SYSTEM--

ONE FOR STUDENTS WHO ARE HANDICAPPED AND A SECOND FOR STUDENTS WHO ARE NOT HANDICAPPED.

A SECOND EXAMPLE OF THIS CONCERN IS FOUND IN SEC. 612, "ELIGIBILITY," SUBSECTION (6):

> THE STATE EDUCATIONAL AGENCY SHALL BE RESPONSIBLE FOR ASSURING THAT THE REQUIREMENTS OF THIS PART ARE CARRIED OUT AND THAT ALL EDUCATIONAL PROGRAMS FOR HANDICAPPED CHILDREN WITHIN THE STATE, INCLUDING ALL SUCH PROGRAMS ADMINISTERED BY ANY OTHER STATE OR LOCAL AGENCY, WILL BE UNDER THE GENERAL SUPERVISION OF THE PERSONS RESPONSIBLE FOR EDUCATIONAL PROGRAMS FOR HANDICAPPED CHILDREN IN THE STATE EDUCATIONAL AGENCY AND SHALL MEET EDUCATION STANDARDS OF THE STATE EDUCATIONAL AGENCY.

THE FACT IS THAT ALL EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN ARE NOT UNDER THE JURISDICTION OF THE STATE EDUCATION AGENCY. THE LEGISLATURES IN VARIOUS STATES HAVE ASSIGNED THIS RESPONSIBILITY AMONG A VARIETY OF STATE AGENCIES. IN TEXAS THREE OTHER STATE AGENCIES ARE INVOLVED. FOR A NUMBER OF YEARS THE TEXAS EDUCATION AGENCY HAS PROVIDED LEADERSHIP REGARDING THE QUALITY OF EDUCATION THESE HANDICAPPED CHILDREN HAVE RECEIVED IN THESE OTHER STATE AGENCY PROGRAMS.

WE, HOWEVER, HAVE NO AUTHORITY OVER THE FUNDS, EITHER STATE OR FEDERAL, APPROPRIATED TO THESE STATE AGENCIES OR HOW THESE FUNDS ARE EXPENDED. NEITHER DO WE HAVE AUTHORITY OVER THE PUPILS THESE STATE AGENCIES ADMIT OR DISMISS.

ANOTHER POSSIBLE IMPLICATION OF THIS SECTION IS THAT CONGRESS IS ATTEMPTING TO CAUSE STATE EDUCATION AGENCIES TO BE RESPONSIBLE FOR COORDINATION OF CERTAIN FEDERAL PROGRAMS WHICH RIGHTFULLY ARE THE RESPONSIBILITY OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE. AN EXAMPLE IS THE 10% MANDATORY PROVISION OF SERVICES FOR HANDICAPPED CHILDREN REQUIRED AS A PART OF "HEAD START PROGRAMS." ARE THESE SERVICES CONSIDERED EDUCATIONAL?

THE SECOND AREA OF CONCERN DEALS WITH ADDITIONAL REQUIREMENTS IN THE EDUCATION OF HANDICAPPED CHILDREN, MANDATORY DATES, AND PROPOSED FUNDING LEVELS.

THE LAW REQUIRES THAT ALL HANDICAPPED PUPILS BETWEEN THE AGES OF 3 AND 18 BY SEPTEMBER 1, 1978, HAVE A FREE APPROPRIATE PUBLIC EDUCATION AVAILABLE TO THEM, AND BY SEPTEMBER 1, 1980, ALL HANDICAPPED PUPILS HAVE A FREE APPROPRIATE PUBLIC EDUCATION AVAILABLE TO THEM.

THE LAW FURTHER STIPULATES THAT THE FIRST PRIORITY OF SERVICE MUST GO TO HANDICAPPED PUPILS WHO ARE NOT RECEIVING AN EDUCATION AND THE SECOND PRIORITY IS WITH RESPECT TO HANDICAPPED CHILDREN, STARTING WITH THE MOST SEVERELY HANDICAPPED, WHO ARE RECEIVING AN INADEQUATE EDUCATION.

THE LAW IS VERY SPECIFIC ABOUT SOME OF THE REQUIREMENTS NECESSARY FOR AN ADEQUATE EDUCATION: REQUIREMENTS OF AN INDIVIDUALIZED EDUCATIONAL PLAN, PHYSICAL EDUCATION, AND AN ARRAY OF SERVICES FROM A VARIETY OF RELATED SERVICES PERSONNEL--MANY OF WHOM ARE NOT NOW A PART OF PUBLIC EDUCATION.

THE SECTION PERTAINING TO FUNDING, SEC. 611, "ENTITLEMENTS AND ALLOCATIONS," SETS FORTH A TIME SCHEDULE OF INTENDED GRANT ASSISTANCE STARTING WITH 5% FOR FY 1978 AND UP TO 40% FOR FY 1982.

THE PROBLEM HERE IS THAT IF STATE EDUCATION AGENCIES AND LOCAL SCHOOL DISTRICTS ARE GOING TO MEET THE NEW MANDATES OF THIS LAW, THE LARGER AMOUNTS OF FINANCIAL ASSISTANCE ARE NEEDED NOW--THAT IS, BETWEEN 1978 AND 1980--AND NOT AFTER THE PROGRAM HAS BEEN FULLY DEVELOPED AND IS OPERATIONAL.

THE THIRD AREA OF CONCERN RELATES TO A BROAD ISSUE WHICH AFFECTS THE CHANGING STATE-LOCAL SCHOOL DISTRICT RELATIONSHIPS AND IMPINGEMENTS ON EDUCATION IN GENERAL.

PUBLIC LAW 94-142 SETS FORTH IN CONSIDERABLE DETAIL THE REQUIREMENTS FOR AN INDIVIDUALIZED EDUCATIONAL PLAN FOR HANDICAPPED CHILDREN AND, INSOFAR AS POSSIBLE, THE REQUIREMENT THAT HANDICAPPED CHILDREN BE EDUCATED WITH NONHANDICAPPED CHILDREN.

FOR MORE THAN SEVEN YEARS THE PUBLIC SCHOOLS OF TEXAS HAVE BEEN MOVING IN THIS DIRECTION. IT IS A LONG, SLOW PROCESS TO DEVELOP THE EXPERTISE, KNOWLEDGE, AND SKILLS OF SPECIAL EDUCATION PROFESSIONALS TO BE ABLE TO WORK WITHIN THESE REQUIREMENTS. IT HAS BEEN FOUND TO BE A LONGER, SLOWER PROCESS TO EFFECT THIS CHANGE IN REGULAR EDUCATION.

AN ISSUE THAT MUST BE FACED IS WHETHER OR NOT THIS LAW CAN REQUIRE REGULAR EDUCATION TO MEET THE DEMANDS OF INDIVIDUALIZED EDUCATIONAL PLANS AS WELL AS OTHER APPROPRIATE EDUCATION REQUIREMENTS FOR HANDICAPPED PUPILS WHO ARE SERVED BY AND IN REGULAR EDUCATION. A RELATED ISSUE THAT MUST ALSO BE FACED IS WHETHER OR NOT THIS LAW CAUSES STATE EDUCATION AGENCIES TO ESTABLISH ANOTHER DUAL EDUCATION

PROGRAM: ONE FOR HANDICAPPED CHILDREN THAT HAS VERY SPECIFIC APPROPRIATE EDUCATION REQUIREMENTS AND THE OTHER FOR NONHANDICAPPED CHILDREN.

THANK YOU FOR THIS OPPORTUNITY TO SHARE THESE CONCERNS.

JUL 25 1977

Texas Education Agency

201 East Eleventh Street
Austin, Texas
78701

- STATE BOARD OF EDUCATION
- STATE COMMISSIONER OF EDUCATION
- STATE DEPARTMENT OF EDUCATION

July 18, 1977

Received
Date 7/25/77
[illegible]

The Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

Thank you for the opportunity of presenting additional information relative to the Education for All Handicapped Children Act of 1975, Public Law 94-142. I feel the additional questions you have posed are most fundamental. The responses to your questions follow.

1. Why do you say that Section 615 requires a State to operate a dual hearings and appeals procedure?

> *Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child* [Public Law 94-142, Education for All Handicapped Children Act of 1975, Sec. 615(b)(2)].
>
> *Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education, who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing contained in this section shall deprive any party of any legal remedy* [Texas Education Code § 11.13(a)].

Long established State Board of Education policies have provided that the initial hearing starts with (1) the local school superintendent, with orderly appeals to (2) the local board of trustees, (3) the state commissioner of education, and (4) the State Board of Education.

Preliminary concerns have centered around the issues that (1) in this established hearings and appeals process the parents or guardians of handicapped children cannot get an "impartial" hearing and (2) the local school superintendent and the state commissioner of education may both be considered "employees of such agencies."

2. It was not the intent of P.L. 94-142 to create dual education systems. Can you further explain why you feel P.L. 94-142 encourages a dual system?

> In Sec. 602(19) *individualized education program* is very specific.
>
> Sec. 612(5)(B) provides that ...*handicapped children...to the maximum extent appropriate...are educated with children who are not handicapped...*
>
> Sec. 618, *Evaluation*, could potentially require school districts to report individual pupil progress to state education agencies in order to be eligible for federal funds.

There are no present statutes requiring this degree of specificity in the education of nonhandicapped pupils.

This spring, members of our staff held 40 public hearings on the proposed plan for education of exceptional children. A great number of public school principals testified that the requirements for Public Law 94-142 were such that the proportion of staff time was not reasonable between the expectations and demands for special education compared to regular education. These principals were perceiving the implementation of Public Law 94-142 as creating a dual school structure.

3. You mention in your statement the Texas law and P.L. 94-142 are in conflict on two points: (1) appeal to the State level on due process hearings...

The conflict between Texas law and P.L. 94-142 on appeals to the state level on due process hearings is explained in item #1 above.

3. (2) State education agency supervision.

> *The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State...will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency...* [Public Law 94-142, Education for All Handicapped Children Act of 1975, Sec. 612(6)].

> *Any activity with persons under 21 years of age which is carried on in the state by other state or federal agencies, except higher education in approved colleges, shall be subject in its education aspects to the rules and regulations of the Central Education Agency* [Texas Education Code § 11.02(b)].

Texas Education Code § 11.02(b) is limited, however, by Texas Education Code § 1.04(b) which states:

> *This code shall not apply to those eleemosynary institutions under the control and direction of the Department of Mental Health and Mental Retardation or to the institutions and activities of the Texas Youth Council.*

The agencies which provide other educational programs are the Texas Department of Mental Health and Mental Retardation, which operates the state schools for the mentally retarded and the state mental hospitals; the Texas Youth Council, which operates the institutions and activities for juvenile delinquents; and the University of Texas system, which operates the Moody State School for Crippled Children.

For a number of years the Texas Education Agency has had the authority and has exercised this authority in evaluating the quality of education provided pupils in these facilities through the mechanism of public school accreditation (Texas Education Code 16.053). Problems identified relative to this particular section of Public Law 94-142 are:

(1) We have no general supervision over funds, either state or federal, appropriated to these state education agencies for educational purposes.

(2) We have no authority over the general supervision of pupils that these agencies admit or dismiss.

Further, the Texas Department of Mental Health and Mental Retardation and the University of Texas system have state legislative authority whereby they may charge the parents or guardians of children admitted to their facilities for room and board on a sliding scale basis. Monies collected from parents and guardians of children in these facilities are considered by the state legislature as general revenue funds.

Our state does have legal authority for interagency agreements and interagency cooperation. However, the wording of Public Law 94-142 is to the effect of general supervision. This raises many aspects for possible legal interpretations.

Again, thank you for the opportunity of presenting testimony to your subcommittee on this subject and for the opportunity of responding to these questions.

Very truly yours,

M. L. Brockette

M. L. Brockette
Commissioner of Education

cc: Wesley Apker
Joe Kelly Butler

TESTIMONY ON PUBLIC LAW 94-142, THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

by

the National Association of State Boards of Education

Submitted to

the U.S. Senate Subcommittee on the Handicapped

July, 1977

The following written testimony on Public Law 94-142, the Education for All Handicapped Children Act of 1975, is submitted for the Congressional Record by the National Association of State Boards of Education (NASBE) to supplement oral testimony delivered on behalf of Joe Kelly Butler, Chairman of the State Board of Education for the State of Texas, on June 22, 1977. NASBE commends the diligent efforts of the Congress in developing and passing this monumental Act designed to benefit the handicapped children of our nation who are in desperate need of special educational services. This legislation represents national recognition that the education of handicapped children has assumed its rightful place in our educational systems.

The unresponsiveness of the educational system was first shaken by the growing litigative movement initiated in 1972 by landmark cases such as the Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania and Mills v. Board of Education of District of Columbia. Individual states began to respond to the changing philosophical, educational, and moral practices of exclusion and segregation of the handicapped which predominated the educational system. In the following few years, a proliferation of state special education legislation was introduced and passed until 49 of the 50 states had developed varying types of law, permissive and mandatory, concerning the education of handicapped students. This legislation generally included requirements for identification, evaluation, placement, and provisions of due process. Divergent timelines, varying from several years to long range planning for implementation of state mandates of up to six or seven years were provided in this legislative movement.

The Congress also became actively involved in carefully considering the education of handicapped children during this period of change. Recognizing the subsubstantial inferiority of educational opportunities for the handicapped as compared to those of the general population and the accompanying deprivation of Constitutional rights such as procedural due process and equal protection of law, it was believed that national priorities and standards for the education of the handicapped ought to be established. Numerous bills were introduced, hearings were held, and after years of work PL 94-142 finally became law on November 29, 1975. This piece of legislation, intended to increase and improve the educational services provided to handicapped children, has been described by many as one of the most intricate, detailed Acts ever passed by the Congress. Truly, the Congress is to be commended for its wisdom in recognizing the urgent plight of handicapped children in our nation and for its diligence in attempting to resolve the many complex issues addressed in the Act.

NASBE wishes to state its unequivocal support for the intent of PL 94-142; and the Association has committed, and will continue to commit its resources, knowledge, and experience to effectively improve the quality of educational services provided to handicapped children. NASBE staff and state board of education members throughout the nation have expended considerable energy and time during the past year in studying the implementation of PL 94-142. In numerous meetings involving state legislators, governors' staffs, chief state school officers, state education agency personnel, and state board of education members, implementation issues related to the Act were elaborately studied and discussed in depth. The focus of these meetings was directed toward identifying barriers to effective implementation at both state and federal levels and possible resolutions of the barriers.

In consideration of this intense, in-depth input, NASBE has determined that it is positively essential that the Congress carefully reconsider certain requirements of the Act which, if unresolved, will be one of the single greatest forces in detracting from the intent of the Act. NASBE sets forth this testimony to help bring about those changes which will make for effective and efficient implementation. The Association's recommendations will in no manner detract from the goal of providing a free, appropriate, public education to the handicapped children of our nation. Based upon NASBE's past experience with those policy-formulators who are crucial in the process of effective implementation of PL 94-142, it is essential that the Congress not continue ignoring the consistent pleas for relief from stringent requirements. It must be realized that superimposing a federal mandate on 49 already existing state mandates will result in discrepancies requiring change in either, or both, of those mandates. The unparalleled prescriptiveness of the Act presents serious questions concerning the future of federal-state relations in future educational programs. Certainly the establishment of such precise, explicit, and detailed requirements does not take into consideration the unique, pre-determined efforts of individual states to prescribe programs which meet their own needs.

NASBE's following testimony will address four critical areas of the Act which the Congress must carefully analyze in order to assure the attainment of the national policy of providing a free appropriate public education to all handicapped children: 1) funding and related fiscal issues, 2) the role of the state education agency in supervision, 3) requirements of procedural due process, and 4) accurate child count procedures.

Funding and Related Fiscal Issues

A. The Federal Contribution. PL 94-142 was designed as a formula grant Act to states with the intention "to assist States and localities to provide for the education of all handicapped children". The formula utilized to allocate funds to states is based on the number of handicapped children receiving special education and related services in a state multiplied by a percentage of the national average per pupil expenditure. The percentage is set at 5 percent for FY 1978, and increases in subsequent years to 10 percent for FY 1979, 20 percent for FY 1980, 30 percent for FY 1981, and 40 percent for FY 1982 and the following years.

It has been estimated that state and local educational agencies will have to increase expenditures by $3 to 4 billion by FY 1979 for special educational services alone in order to meet the requirements of PL 94-142. This represents a 60 to 80 percent increase from the expenditure level of approximately $5 billion in FY 1976. Compared to the potential federal authorization level, the state and local contribution will be five to six times more than the federal contribution.

It has been argued that this situation is justifiable since the states are under their own state mandates and court orders to provide educational services to handicapped children. However, the Congress must carefully review the requirements of PL 94-142 which are not required by state special education legislation, not required by Section 504 of the Rehabilitation Act of 1973, and not required by court orders. Examples of these requirements include: specialized accounting and reporting systems, personnel development and training, numerous related services, individualized educational programs, and special recordkeeping procedures. Keeping in mind that the federal contribution per eligible handicapped child in 1978 will be approximately $70, this argument does not follow a course of logic.

The possibility of raising state and local expenditures by $3 to 4 billion in the next two years is not realistic. State and local spending has risen at least $2 billion since 1972, representing a significant contribution and commitment to providing educational services to the handicapped children of our nation. To believe that this trend could continue, even where states and localities want to provide quality special education services, defies basic economic reasoning. A recent study by the Congressional Budget Office supports this contention by pointing out that current demands for educational expenditures at the state and local levels are likely to exceed educational revenue-raising ability at these levels for at least the next several years.

The ramifications of this condition have already been reported as having the effect of placing special education programs in direct competition with general education programs. This does not restrict itself to extra-curricular activities and athletic programs, but strikes at the heart of the teaching-learning process. Local educational agencies, in Rhode Island, for example, have been forced to cut necessary teaching positions from general education programs in order to meet the need for special education services. It cannot be theorized that the Congressional intent of PL 94-142 was to detract from the educational services provided to our school populations of normal children to meet the needs of our handicapped children. Yet, due to funding available at federal, state, or local levels being a somewhat discrete quantity that cannot be stretched to meet all demands, the Act and its accompanying low allocations allow few options for state and local educational agencies. Truly, the viability of our society demands a well educated populace in order for our nation to keep pace with technological advances which are necessary to maintain our stature in the world community.

While increased funding alone cannot solve all the problems associated with implementing a massive social change such as the provision of appropriate educational services to the handicapped, the lack of sufficient funding hampers the entire program at its inception. It is absolutely essential that the Congress recognize the overburdened fiscal state and local resources just as it recognized its own fiscal limits in the development of PL 94-142 when the Conference Committee drastically reduced authorization levels in both House and Senate versions of the bill. The Committee attributed the reductions to "the realities of the times". Such "realities" pertain not only to the federal ability to allocate scarce resources but also to state and local abilities.

State and local educational agencies have extremely limited resources and revenue-raising capabilities compared to that at the federal level. Reallocation of expenditures to accommodate necessary improvements in educational services for the handicapped will only detract from equally important educational programs for normal children. The only avenue of relief to this situation lies at the federal level. If quality education for handicapped children is truly a federal priority, it must be demonstrated with sufficient monetary support to permit the Act to achieve its purposes.

NASBE strongly recommends that the federal level of funding for the Act be immediately set and maintained at the 40 percent level, thus eliminating the phase-in. Other than setting back the timelines for implementation of this already long-overdue recognition of the right of handicapped children to an appropriate education, this avenue of relief is the only practicable resolution.

B. Equalization. The Act requires that 50 percent of state funds be passed through to local educational agencies in FY 1978, and that 75 percent be passed through in FY 1979. The pass-through is not an onerous concept in itself since the majority of direct educational services will be provided at the local level. The major difficulty of this procedure is that the means of determining the amount of pass-through is based upon a head-count, in total disregard of state equalization plans. This practice results in districts already providing special educational services to substantial numbers of their handicapped children receiving the majority of the funds. Those districts which face the problem of initiating programs for the handicapped, or geographic problems such as sparse population, do not receive essential funding to overcome their problems and, indeed, are further punished.

Many states, in providing state funds to local school districts, are under strict court orders or have established formulae for equalizing distribution of funds. The pass-through requirement of PL 94-142 totally ignores the principle of equalization and negates any state efforts to operationalize such a plan.

The Act in Sec. 614(e) does provide for reallocation of within-state funds to those local educational agencies not adequately providing special education and related services to all their handicapped children. However, these reallocations are to be determined on an ad hoc basis by the state educational agency and will leave the SEA open to political charges of favoring certain districts over others.

The resolution of this issue could be accomplished by having states pass through the funds in accordance with an equalization plan stating a formula for distribution which takes into account factors such as per capita income and property tax wealth.

C. Administrative Costs. While the Act designates the state educational agency as the responsible agent for assuring that the requirements of PL 94-142 are met and for the general supervision of all programs administered to handicapped children, it is provided with funds equal to 5 percent of the total amount of funds received by the state or $200,000 for administrative costs. The obligation to monitor and supervise the numerous educational programs along with a variety of other programs providing related services will prove to be extensive. Coupled with the volume of recordkeeping, accounting systems, and reporting requirements of the Act, this administrative set-aside will be totally inadequate to do a satisfactory job. This factor should be given careful consideration by the Congress prior to close scrutinization of these activities for compliance by the Bureau of Education for the Handicapped. It should further be noted that no provisions for local administrative costs have been provided by the Act. Clearly, the supervisory capabilities of local educational agencies need to be increased along with the expansion of direct educational services at the local level. Further, the data reporting and accounting systems need to be funded at a local level as well as the state level.

It is recommended that the Congress raise the state administrative set-aside and include provisions for local administrative set-asides.

D. Personnel Preparation. PL 94-142 stipulates that handicapped children must be educated in the least restrictive educational environment to the maximum extent possible. A report by the Comptroller General of the United States provides statistical data which indicate that this educational practice is increasing. However, the Act requires that states may not use pass-through funds to provide for personnel development until a state has met priority I - providing special educational services to unserved children. These children are usually the most severely, multiply handicapped children, also the ones for whom there are not adequately trained professional personnel. The teacher training institutions of our country simply have not recognized the necessity for training personnel to teach the severely handicapped. Consequently, states are prohibited from providing monies to train the personnel in the vital area in which they are needed.

Since implementation of the concept of least restrictive environment will result in substantial numbers of the mildly handicapped children receiving their instruction in regular classrooms from regular classroom teachers, it follows that to a large extent, the success of the program lies in providing quality educational services by regular classroom teachers. A review of most certification requirements and degree programs of institutions of higher learning reveals that not even introductory courses in special education are required. The greatest number of regular classroom teachers in our country have no training whatsoever in special education.

It is strongly recommended that the amounts available in Part D be significantly increased to correct this situation. It is further recommended that Congress appropriate funds equal to the authorization levels for discretionary programs in PL 95-49.

The State Educational Agency Role

PL 94-142 in Sec. 612(6) requires that the state educational agency be responsible for "general supervision" of all programs within the state providing services to handicapped children. The intent of this requirement is clearly to provide a responsible entity in each state to ensure that coordination among programs exists so that handicapped children are not shuffled from agency to agency with countering claims of who should provide services to a child. Such assurance should be maintained, although the present requirement for SEA total responsibility is unworkable in many states. Florida, New Hampshire, Colorado, and Wyoming have limited authority over the operations of local school districts. In Pennsylvania, by law, certain special educational and related service responsibilities are assigned to agencies other than the SEA.

It has been proposed that these situations may be resolved through the submission of written interagency agreements. However, without a basis to permit such agreements in state law, the agreements would have only paper value, being constitutionally unenforceable and voidable.

It is strongly recommended that the general supervision requirements be based upon the following criteria: 1) ensure that all educational programs for handicapped children within the state, including all such programs administered by any state or local agency, meet the standards of the state educational agency, 2) establish a procedure for coordinating service agencies within the state, and 3) invest an agency with the authority to resolve any interagency disputes.

Procedural Due Process

A. The Appeals Process. The litigative movement of the early 1970's had a direct effect on recognition of handicapped children's right to procedural due process of law. Consequently, one of the common elements included in most state legislation was a procedure to ensure due process in matters of identification, evaluation, and placement to handicapped children and their parents. In many states, these procedures established by the legislatures or ordered by the courts have functioned as intended for four years or more.

PL 94-142 mandates a precise, exact format to be followed to assure due process. This mandate does not follow the typical logic followed in applying due process to varying situations. The U.S. Supreme Court recognized this fact in reference to due process in the case Hannah v. Larche when it stated, "Its exact boundaries are undefiniable and its content varies according to specific factual contexts." Sec. 615(c) requires that the state educational agency establish an administrative appeal for any party aggrieved by the findings of a hearing of a local educational agency or intermediate educational unit. This requirement among other prescriptive issues in this Section presents a conflict with current practice in several states. Florida, Nebraska, Rhode Island, and California do not provide for state educational agency review of local hearings. However, California maintains such administrative review to be conducted by county units, Florida established a state appeals board to resolve all intergovernmental appeals from local levels, and Nebraska developed a state special education appeals board independent of the SEA to hear appeals from local educational agencies. These arrangements represent state procedures which provide for an administrative appeal above the local educational agency not directly involving the state educational agency in that process. These arrangements have been operational and have proven their effectiveness over a period of time. There is no evidence to prove that changes in these systems will or can produce more effective results. Thus it would seem that change merely for change's sake or for conformity would be a time-consuming process for those states and one that would not increase effectiveness or efficiency.

NASBE recommends that the Congress consider flexibility in the due process section to allow for administrative appeals mechanisms other than those established solely by the state educational agency.

B. Surrogate Parents. Sec. 615(b)(1)(B) of the Act specifies conditions for the appointment of an individual to act as a surrogate for parents or guardian of a handicapped child. It is required that such individual "shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child". The intent of this section is clearly to prevent an educational employee from reiterating a position in which he/she had decided for the school unit where employed, when supposedly representing the interests of the child.

Numerous publications such as the Council for Exceptional Children's "A Primer on Due Process" have addressed the surrogate parent issue and made recommendations for the qualifications of persons who should be eligible to be surrogates. Such a person should, according to recommendations, have knowledge of legal matters, handicapping conditions, educational service options, and numerous other qualifications. In reality, people meeting these numerous qualities are, at best, rare. In addition, it would seem that those persons most desirable to serve as surrogates could be supplementary service personnel from within the localities where the handicapped child resides, who would possess in-depth knowledge about education and service options within that locale.

For example, social workers within a school district would possess an understanding of economic, background, and educational service factors of a school district. Providing they were not directly involved in the case work of an individual handicapped child, it would be conceivable that they could function effectively as a surrogate for the child.

It is recommended that the Act provide the opportunity for personnel to serve as surrogates if they are not directly involved in provision of services to the handicapped child.

Child Count

While PL 94-142 mandates that free appropriate public education and related services be provided to all handicapped children, the child count requirement in Sec. 611(a)(3), on which state entitlements are determined, hampers and precludes achievement of reaching the goal of appropriateness. The Act presents a dichotomy by specifying throughout the appropriateness levels on a head count rather than service count. The counting procedures further delimit the number of handicapped children eligible for inclusion in the state entitlement by requiring an average count of the numbers of children served on October 1 and February 1.

Further, the child count on a per head basis in no way relates to the costs incurred to educate a handicapped child. Under current requirements, a mildly handicapped child receiving special educational services needing only the help of a special education teacher brings the state the same amount of funding as a severely handicapped child needing speech therapy, a special education teacher, physical therapy, and occupational therapy.

It is strongly recommended that Congress carefully consider this situation. It may be that the low child counts provided to BEH are not indicative that there are fewer handicapped children in our nation than had been predicted, but rather that the Act's counting procedures are so prohibitive that a true count is not possible.

The Act should be amended to require the count to be determined by the cumulative services provided to handicapped children within a state.

The National Association of State Boards of Education appreciates this opportunity to participate in the process of making PL 94-142 more effective. NASBE pledges its knowledge, resources, and experience to the task of improving the quality of educational services provided to our nation's handicapped children.

Senator STAFFORD. Our next witness is James D. Nowlan, special assistant to the Governor for Education, State of Illinois.

We welcome you here. We will be happy to put your entire statement into the record at the conclusion of your testimony. We hope you will be able to summarize.

STATEMENT OF JAMES D. NOWLAN, SPECIAL ASSISTANT TO THE GOVERNOR FOR EDUCATION, STATE OF ILLINOIS

Mr. NOWLAN. I will try to squeeze my 5 minutes into a couple of minutes.

The plain fact of life is, if the cost of fully implementing 94–142 is as substantial as estimated by persons more knowledgeable than I, then it appears impossible to achieve full implementation of free appropriate public education as defined in 94–142 in the next 2 to 3 years, at least not from predominantly State funds alone.

I think we should not raise expectations which cannot be fulfilled immediately. As Governor Thompson of Illinois has pledged to Illinoisans, he will make no promises which cannot be kept. We offer some concerns and recommendations in the spirit of increasing the potential for cooperation between States and the National Government in efforts to seek the most efficacious programs on behalf of handicapped children.

We strongly support the comments made by the gentlemen from New York, New Jersey, the Education Commission of the States, National Governors' Conference and the National Conference of State Legislatures.

A few specific concerns:

We are deeply concerned with the flat grant reimbursement plan for allocation of Federal dollars to the States. We believe it conflicts with Illinois efforts to equalize expenditures between the property-rich and property-poor school districts within our State. For example, I would imagine that identification of the unserved handicapped child probably lags in poorer districts, which simply cannot afford the expensive and specific education of the handicapped programs which richer districts can provide.

Thus, we recommend very strongly that consideration be given to taking cognizance of the equalization formulas in States, such as Illinois, and allow Federal funds to complement such formulas.

We are also concerned that Illinois would not be permitted to use any initial 94–142 funds to improve and expand existing effective Illinois programs and services, whereas some of the other States which provide fewer services to the handicapped may use their Federal funds for programs Illinois has already initiated but not yet totally fulfilled.

We are also concerned about the future role of private special education facilities. In Illinois there are more than 200 such schools which currently provide important services to the most profoundly handicapped children. It might be a consequence of the requirement that there be free appropriate public education that there would be strong inducement on the part of some local districts to pull children in their districts back from these private facilities in an effort to save money which the local districts will have to provide for each of these children.

We feel that this might not necessarily be in the best interests of these children who are presently being served in these specialized facilities

We also believe that Public Law 94–142 should be amended to withhold imposition of full requirements of the act until the Federal contribution is equal to at least 40 percent of the national average per pupil expenditure. We believe the law should be amended to provide for a binding legal commitment on the part of the Federal Government to provide full authorization levels for the act.

We believe the child count should allow children receiving multiple services to be counted for each service provided.

We concur with others who said the act should be amended to make it specifically clear that individualized education program is not a contract for services, but instead an important pupil-oriented planning guide.

There are many other points which I would like to make which I believe are part of our lengthy testimony. In deference to the one gentleman who is remaining, I will conclude on this point, and offer to be of any assistance in amplifying these points.

Senator STAFFORD. Thank you very much. We appreciate your appearing here and helping the subcommittee.

There will be a question or two that we will send to you for response in writing. You may make additional comments for the record. We will hold that open for that purpose.

The Chair appreciates your cooperation in speedily summarizing your testimony.

Mr. NOWLAN. Thank you.

[The prepared statement of Mr. Nowlan and response to additional questions follows:]

PUBLIC TESTIMONY REGARDING PUBLIC LAW 94-142
U.S. SENATE SUB-COMMITTEE ON THE HANDICAPPED

June 22, 1977

By James D. Nowlan,
Special Assistant to Governor James R. Thompson - State of Illinois

SUMMARY

HISTORY

- Illinois has dramatically increased support for special education over the past 8 years. In 1969, the state appropriation was $30 million, in 1977 - $300 million.

Breakdown of Special Education Expenditures in FY 77

State Share	$300,000,000	53%
Local Share	$250,000,000	43%
Federal Share	$ 22,000,000	4%
	$572,000,000	100%

227,000 Handicapped Pupils in 1976-77

$2,520	cost per pupil, Total
-2,425	cost per pupil, State and Local
$ 95	cost per pupil, Federal Support

- It costs twice as much to educate a handicapped pupil in Illinois in comparison to a non-handicapped pupil. We are not at full service. IOE projects that as many as 103,000 students, not now served, may need special education programs.

- It may cost us as much as $120 million in new state dollars to provide these programs over the next several fiscal years. The mandate is very specific: every child is to receive full and individualized services at public expense regardless of the resources of the state or local school district.

CONCERNS

- The federal funding commitment to P.L. 94-142 is of concern to Illinois. Only $70 per child will be provided the first year of the program.

- Another concern is the federal government's disallowance of a cumulative child count for purposes of calculating the state's entitlement. A child with multiple handicaps may be counted only once even if he or she receives multiple services.

- The flat grant reimbursement for within-state allocation of the federal dollars conflicts with Illinois' efforts to equalize expenditures between property rich and property poor school districts.

- Illinois will not be permitted to use 94-142 funds for existing programs and services. Whereas, other states which provide few services to the handicapped may use their federal funds for programs Illinois already has initiated.

- Illinois is concerned about the future of private, special education facilities which currently provide services to the most profoundly handicapped children.

RECOMMENDATIONS

- P.L. 94-142 should be amended to hold recipients harmless until federal contribution is equal to 40 percent of the national average per pupil expenditure. The Law should be amended to provide for a binding legal commitment on the part of the federal government to provide full authorization levels for the Act.

- The child count should allow children receiving multiple services to be counted for each service provided.

- The flat grant assistance to both wealthy and poor school districts should be amended by development of a formula cognizant of state equalization efforts.

- P.L. 94-142 monies should be used to support existing state programs - without being "earmarked" for service of all "unserved" children.

- The Act should be amended to specify that the Individual Education Program (IEP) is not a contract for services.

I. INTRODUCTION

Illinois has dramatically increased support for public education in recent years. Since 1970, the state's share of financing elementary and secondary education has climbed from 40 percent to almost 50 percent. Illinois will undoubtedly continue to increase its share of total support.

"A good common school education for all" in the Illinois Constitution of 1870 meant an eighth-grade certificate, adequate for 19th century students. Article X of the Illinois Constitution of 1970 has far greater implications.

> ARTICLE X
> EDUCATION
>
> SECTION 1. GOAL - FREE SCHOOLS
>
> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.

Although the Illinois Supreme Court has ruled that "primary responsibility" is not a constitutional mandate, but rather a commitment to be attained, Illinois has moved rapidly toward the fundamental goal of "the educational development of all persons to the limits of their capacities."

What must be kept in mind is that revenues are limited, and responsibility for budgeting in Illinois is shared by the Governor, legislature and taxpaying public.

Since the effective date of Illinois' 1973 equalization formula, the state has assumed a greater share of the costs of public education in relation to total funds from all sources. Table I depicts relative contributions from each level of government.

TABLE I

ELEMENTARY AND SECONDARY EDUCATION
FUNDING SOURCES
($ in millions)

	FY 72	FY 73	FY 74	FY 75	FY 76	FY 77
STATE	$ 922.6	$1,104.4	$1,231.3	$1,469.4	$1,567.7	$1,719.8
%	44.2	43.1	44.3	47.5	46.4	47.6
LOCAL	1,155.0	1,320.3	1,377.3	1,440.1	1,475.4	1,541.2
%	51.5	51.4	49.6	46.5	43.6	42.6
FEDERAL	97.2	142.1	170.6	185.7	338.4	353.2
%	4.2	5.5	6.1	6.0	10.0	9.8
TOTAL	$2,174.8	$2,566.8	$2,779.2	$3,095.2	$3,381.5	$3,614.2

NOTE: Excludes capital expenditures at all levels; Local revenue has been adjusted to reflect taxes collected; FY 77 local revenue is estimated.

As Table I indicates, the state has been the primary source of funding elementary-secondary education since fiscal year 1975. Illinois is maintaining a leadership role in state support of elementary-secondary education among all the major states. Specific areas in which Illinois ranks first in funding increases or financial commitment include total state appropriations for public education and percentage share of funding in relation to total funds from all sources.

This statement will attempt to highlight where Illinois stands in regard to special education funding, how it might improve its system, and how it can best meet the needs of special education school children within the resources made available by federal, state and local resources. Related state and national issues are discussed in regard to their programmatic and fiscal impact on education finance in Illinois.

II. ILLINOIS' HISTORICAL COMMITMENT TO SPECIAL EDUCATION

The Illinois legislature approved House Bill 1407 in 1965. The act mandated that school districts provide special education services for eligible exceptional children ages 3 to 21 by July 1, 1969. Article 14 of The Illinois School Code has been emulated by many other states as a model for services to handicapped children.

The state has also been the primary source of funding for this categorical grant-in-aid program. In fiscal year 1969 approximately $30 million was spent on special education programs. In the first eight years of this act, the cost to the state has more than quadrupled. In fiscal year 1977, $150 million has been appropriated for special education programs, a 24 percent increase over fiscal year 1976 for all special education programs.

This state support is in addition to $150 million generated for handicapped pupils through general distributive aid payments, approximately $250 million in local contributions to special education, and $22 million in federal aid. These latter funds are primarily from Title I set-asides from the federal Elementary-Secondary Education Act and Vocational Education funds.

In summary, a total of $572 million is available in fiscal year 1977 (FY 77) to provide services to handicapped children. The state's actual share is well over 50 percent of the total revenues available for special education in FY 77. With 227,000 special education students receiving services, this means the average per pupil expenditure in state and local funds for these students is $2,425, twice what it costs to educate a non-handicapped pupil.

The special education programs throughout Illinois have expanded and are continuing to expand despite declining enrollments in the regular classroom. Such program growth may be attributed to better identification processes, increased staff availability and skills, and increased public awareness of potential services.

Additionally, there are a large number of unserved handicapped children in our state. Illinois is not at full service levels in its special education programs. Based upon national incidence rates, the Illinois Office of Education has estimated that the number of those persons requiring special education services in Illinois ranges between 330,000 and 370,000. The average number of handicapped pupils currently served in Illinois is 227,000. Hence, with fiscal and legislative environment permitting, substantial program growth will continue.

Illinois' dollar share in future commitments to special education, with or without Public Law 94-142 (P.L. 94-142), will increase substantially as more students are identified as needing special education, and as the state implements Section 504 of the Rehabilitation Act of 1973, which also mandates through regulation that Illinois provide a "free, appropriate public education" for all handicapped students.

In October 1976, the Illinois Office of Education estimated to the Education Commission of the States that the costs of providing full service to all handicapped children under P.L. 94-142 would increase by 161 percent over FY 75 expenditures. No matter how hard Illinois may try, it appears impossible to meet that kind of increase in one year with new state dollars alone.

P.L 94-142 is very specific in its order to the states: every child is to receive full and individualized services at public expense regardless of the resources of the state or a local school district. The policies expressed in the law are binding irrespective of what happens to the size of the federal or state appropriations.

III. ILLINOIS GOOD FAITH COMMITMENT TO COMPLY WITH P.L. 94-142

Illinois fully supports the laudable goals of P.L. 94-142. As the Act states: "It is in the national interest that the General Government assist state and local efforts," and thus our state welcomes federal assistance and funds as we have in the past. While we stress our good faith commitment to comply with the intent of the law, we must raise questions about the efficacy of the Act's detail and requirements.

Last year the respected Illinois School Problems Commission held numerous meetings to gather public testimony on P.L. 94-142. As a result, a series of seventeen bills were introduced in the General Assembly to amend state law to conform to the federal act. These bills are presently being deliberated by the Illinois General Assembly.

Additionally, an interagency task force comprised of the Departments of Mental Health and Developmental Disabilities, Children and Family Services, Public Aid, Public Health, Corrections, Division of Vocational Rehabilitation, the Office of Education, and the Governor's office has been meeting regularly for several months to address the draft Illinois State Plan and implementing legislation. The state has also met with personnel in the Bureau of the Handicapped of HEW to ask for clarification of questions concerning rules and regulations proposed to implement the Act.

Many interested state parties have attempted to resolve differences concerning P.L. 94-142. From Washington, these programmatic and fiscal disputes may appear to be minor, intrastate squabbles, however, they can be traced to confusion and wariness over the possible consequences for the state's participation in this discretionary program.

This wariness is analagous to the situation in Illinois between the state and local school districts. The districts view with increasing skepticism and alarm the state's imposition of numerous statutory mandates to provide services, programs, and courses of study at the local level, without concurrently providing funds to implement or maintain them.

The Governor has created a Commission on Mandated Programs to review the many education programs currently required by the state for local units of government. The Commission is taking public testimony on the issue of mandated programs and will recommend to the Governor which programs might be modified, relaxed or terminated. Instead of adding to the list of statutory requirements, the mood in Illinois is to "de-mandate," to allow scarce revenues to be expended in greater accordance with local understanding of relative needs and priorities.

Given the constraints of limited funding at both the local and state level, and the increased competition for limited revenues generated by numerous important demands, is it just for the state to impose yet another mandate on the local school system, via the federal government, without somehow providing attendant, adequate funding?

IV. ILLINOIS ESTIMATED COSTS UNDER P.L. 94-142

If Illinois were to enter into a contract with the federal government, guaranteeing free, appropriate public education for all handicapped children, the state would become the guarantor of education and related services, as defined by Congress. While the costs of implementing P.L. 94-142 may run as high as $120 million in new state appropriations to education of the handicapped, the federal share will be phased in over five years at a significantly lower contribution. Not only will Illinois be told how to spend the federal dollars it receives, but the state, and local school districts, will also be told how to spend the $120 million.

Currently, Illinois expends almost twice as much to educate a handicapped child as is spent upon a non-handicapped child. The average per pupil expenditure for a regular pupil is $1,260 per year, while the average per pupil expenditure for a special education student is $2,425 per year (not including federal funds). Approximately 227,000 handicapped children were served in the 1976-77 school year, or 8.7 percent of the total school enrollment. Using Illinois Office of Education figures, approximately 330,000 persons may be in need of special education services, or 12.5% of the total school enrollment.

If indeed some 103,000 students require special education but are not now served in such programs, the projected costs to the state are staggering. If we assume that they may be receiving some form of schooling, we still double the costs of providing those additional, "excess" services:

A. $2,425 for Handicapped Students
-1,260 for Non-Handicapped Students
$1,165 Difference, or average "excess" costs in Illinois

B. $1,165 X 103,000 (unserved handicapped) = $119,995,000 (total estimated cost to state)

Although the state presumably will not have to bear $120 million in new funds the first year of implementing the federal mandate, it may be safe to assume that these costs will be phased in over three to four fiscal years.

The federal government proposes to give Illinois 5 percent of the national average per pupil expenditure, or roughly $70.00 per child as Illinois' share for participation in P.L. 94-142 in FY 78. The Illinois Office of Education has included an estimated $14,000,000 in federal grant-in-aid monies for FY 78 for P.L. 94-142.

While in Illinois attempts to provide a free, appropriate education for all handicapped children in the state at a cost of $2,425 per year per pupil, the federal share in this expensive endeavor will be $70.00 for the first year of the program.

The requirement of P.L. 94-142 that children not now served are the first priority for receipt of federal funds creates problems for Illinois. This provision, along with the non-supplanting of state and local funds, clearly penalizes states such as Illinois which already have progressive programs for identifying and serving the handicapped. Except, Illinois is not yet able to pay the full costs of each child's education and related services' needs because of prorated grants-in-aid.

Since the mandate in the federal law prohibits the use of federal dollars for programs already instituted by the state, Illinois will not be able to use its federal funds for existing programs such as private school tuition costs or programs for non-public school children. Other states, some years behind Illinois which do not now pay tuition costs for handicapped children in private settings will be able to use their federal funds for these expensive activities. Illinois estimates that the private tuition program alone will cost the state an additional $16 million in new state revenues.

The requirements of P.L. 94-142 do not appear to represent a fair sharing of responsibilities between the national and state partners. The states will be asked to expand spending dramatically and immediately to conform long-standing state statutes and regulations to meet detailed and inflexible national requirements, while Washington directs spending the dollars. Excluded from this decision-making for the handicapped, as defined by the federal government, are the Illinois legislature, Governor, and taxpayer. The other "partner," the national government, provides only a minute fraction of the new costs. It may be that states would be wiser to avoid joining hands with you in this case.

For FY 1978, the Governor has pledged $75 million in new general fund revenues for all of elementary-secondary education programs, i.e., general state aid and categorical grants-in-aid. These dollars represent the largest increase among all state functions. The $1,789 million general funds budget for public education is a 4.4 percent increase over current year expenditures and represents the largest percentage increase recommended for basic education among major industrial states. And yet for the probable cost of P.L. 94-142, the state would have to provide more dollar support than we propose for all elementary-secondary education programs for the next fiscal year.

In Illinois we have been striving to meet the needs of the handicapped; we will continue to expand our programs. We sincerely hope that P.L. 94-142 can be amended so as to assist us in reaching common goals.

V. ILLINOIS' RECOMMENDATIONS FOR P.L. 94-142

Governor Thompson wishes to reiterate his administration's endorsement of the commendable goals in the Education for All Handicapped Act; however, the state must challenge several policies within the act which seem inconsistent with appropriate national policy-making on behalf of handicapped children.

First, by giving every state the same number of dollars per handicapped child, the federal government builds uniformly upon a dramatically uneven base. A single, questionable standard was applied to all states, with no recognition given to "bellweather" states such as Illinois.

To distribute federal dollars using a flat grant per pupil formula as the basis for the distribution, contradicts progressive state efforts to equalize resources on behalf of all school children. Evaluation of school dristict data in Illinois has indicated that the addition of categorical grant-in-aid monies, whether federal or state, tends to offset equalization efforts made through the distribution of state aid dollars. Illinois respectfully suggests that wealthy school districts will probably be the greatest beneficiaries of P.L. 94-142, not small, rural, or poor school districts.

Although major revisions to the structure of P.L. 94-142 may not have congressional support at this time, the Office of the Governor joins the Education Commission of the states in recommending specific modifications to the Education for all Handicapped Children Act. The amendments reflect the State of Illinois' concerns over the implementation of P.L. 94-142. In addition, we note in Appendix I, the Illinois State Board of Education's Resolution which further addresses our concerns.

The Office of the Governor is in full support of amending P.L. 94-142 in the following manner:

A. FEDERAL FUNDING RELATED TO STATE OBLIGATIONS UNDER P.L. 94-142

Section 601 is amended by adding a new subsection (e) as follows:

> "(e) Nothing in this Title shall be construed to require a state or any local education agency in such state receiving assistance hereunder to assure that a free appropriate public education as defined in section 602(18) will be available for all handicapped children within the state between the ages of three and twenty-one in any fiscal year in which the state does not receive a grant under this act equal to the number of handicapped children aged three through twenty-one, inclusive, in such state who are receiving special education and related services multiplied by 40 percentum of the average per pupil expenditure in public elementary and secondary schools in the United States."

P.L. 94-142 should be amended to hold recipients harmless from the requirements of the Act which transcend the mandates contained in Section 504 of the Rehabilitiation Act until such time that the federal contribution under P.L. 94-142 is equal to 40 percent of the national average per pupil expenditure multiplied by the number of eligible children. This amendment would compensate those states which have made serious efforts in providing special education delivery services.

B. CONTRACT AUTHORITY

1.(a) Section 601(c) is amended by deleting the phrase ". . . to assist states and localities to provide for the education of all handicapped children,"

(b) Section 601 is further amended by adding the following new subsection at the end thereof:

> "(d) The sums made available under Part B of this Title shall be used for making payments to the states which have submitted and had approved by the Commissioner of Education, state plans as required under Section 613 of Part B."

2. Section 611(g) is hereby deleted and new subsection (g) is inserted in lieu thereof which shall read:

> "(g) From the sums approoriated for any fiscal year, the Commissioner, except as otherwise provided in this section, shall pay to each state which has a plan approved under this Part, the maximum amount to which it it entitled according to subsection (a)(1). Upon the reporting of the number of children under subsection (a)(3) for purposes of subsection (a)(1), any appropriations available for payments under this section shall be deemed obligated."

3. The first sentence of Section 612 is amended to read: "In order to receive assistance under this Part in any fiscal year, a state shall demonstrate to the Commissioner that the following conditions are met."

P.L. 94-142 should be amended to create a firm legal obligation on behalf of the federal government to finance an appropriate share of the program. This would insure a cooperative partnership between federal and state governments to fully implement the objectives of P.L. 94-142.

C. CHILD COUNT

Section 611(a)(3) is hereby amended to read:

> "Section 611(a)(3) The cumulative count of handicapped children receiving special education and related services for one or more reimbursable handicapping conditions during the first school week of February in the fiscal year preceding the fiscal year for which the determination is made."

Because the federal formula is based upon a percentage of the national per pupil expenditure for non-handicapped students rather than a percentage of the national special education, per pupil expenditure, the federal share will approximate only 5 cents for every special education dollar expended by the state. As one method to compensate for this minimal reimbursement, we support a duplicative and cumulative annual census.

D. WITHIN-STATE ALLOCATION

1. Section 611(b)(1)(B) is hereby amended to read:

> "50 percentum of such funds shall be distributed by such state in accordance with a uniformly applicable formula to local educational agencies and intermediate educational units in such State which meet such requirements as the State may establish to carry out the purposes of this Title, for use in accordance with the priorities established under Section 612(3)."

2. Section 611(c)(1)(B) is hereby amended to read:

"except as provided in paragraph (3), 75 percentum of such funds shall be distributed by such State in accordance with a uniformly applicable formula to local educational agencies an intermediate educational units in such State which meet such requirements as the State may establish to carry out the purpose of this Title."

3. Section 611(d) is repealed.

P.L. 94-142 should be amended to eliminate the flat grant formula for reimbursement distribution. Flat grant assistance will permit wealthy school districts with advanced special education services to draw as much federal assistance as poor school districts. Flat grant reimbursement contradicts Illinois' effort to equalize elementary-secondary educational resources. We strongly recommend a federal formula cognizant of state equalization efforts.

E. COMMINGLING AND SUPPLANTING

1. Section 613(a)(9) is repealed.

2. Paragraph (2) of subsection 614(a) is amended by deleting clauses (B) and (C) in paragraph (2), and by placing a period in place of the comma at the end of clause (A).

(c) Section 615(e) is further amended by renumbering paragraphs (2), (3) and (4) as paragraphs (1), (2) and (3) respectively.

We believe that P.L. 94-142 monies should be able to supplant monies expended at the local level for services. If the local district has committed the average per pupil cost for the handicapped child, and has not reduced its local expenditure for the handicapped after federal and state funds have been subtracted from the actual cost of providing the services, the local district should be able to apply P.L. 94-142 dollars to cover the "excess" costs.

F. INDIVIDUALIZED EDUCATION PROGRAM

Section 602(19) is hereby amended by adding the following phrase at the end thereof:

> "provided that such a statement and the process of its development shall not be construed to be a contract for the services described."

It is important that HEW/USOE/BEH clarify the legal meaning of the Individual Education Program. Although Illinois does not interpret the I.E.P. as a binding legal contract for services, many parents and educators do not interpret it in this manner.

VI. CONCLUSION

As stated in the beginning of this testimony, Illinois supports the laudable goals and objectives of the Education for all Handicapped Children Act. Illinois' commitment to providing special education services is an important priority of state government. Our responsibility in this area is historical; it is practical; it is manifest. It is a responsibility from which we cannot and should not shrink.

Illinois welcomes federal initiatives in the area of special education. Illinois believes that through cooperation, the state and federal government can forge a new relationship in protecting the rights and providing services for all handicapped children. In nurturing this new partnership it is important that both the states and federal government share fiscal, program, and political perspectives. It is the goal of the state of Illinois to provide the best educational opportunities for all children, including those receiving special education, in the context of the availability of limited resources.

APPENDIX I

FOR STATE BOARD OF EDUCATION RESOLUTION PUBLIC LAW 94-142

WHEREAS, the Congress of the United States has mandated a free appropriate public education for all handicapped children ages 3-21 by September 1, 1980, and

WHEREAS, the Illinois General Assembly has mandated specialized educational services for all handicapped individuals ages 3-21 since 1969, and

WHEREAS, the State Board of Education Goals Statement has stated both "Continued efforts shall be made to locate, identify and provide services for students who are not currently being served, whether handicapped or gifted" and "The principle of least restrictive placement, "mainstreaming" -- placing exceptional children with all kinds of students -- shall be followed wherever feasible," and

WHEREAS, the State Board of Education endorses the federal and state concept of a "free appropriate public education," for all handicapped children, including private school placement when and where appropriate, and

WHEREAS, the State Board of Education will support the federal impetus for full educational opportunities goal, and

WHEREAS, the State Board of Education welcomes increased federal funding for serving handicapped children, and

WHEREAS, the State Board of Education adheres to the concept of an appropriate measure of state control and flexibility in the implementation and administration of federal programs,

THEREFORE BE IT RESOLVED THAT, the State Board of Education urges the Congress of the United States to appropriate funding commensurate with the statutory authorization levels in P.L. 94-142 and adopt such statutory or administrative revisions as would assure a total state/federal partnership.

Specifically, the Illinois State Board of Education recommends that Congress:

1) Assure, at a minimum, that the appropriation levels for each year of implementation of P.L. 94-142 meet the specified authorization level. It is further recommended that consideration be given to boosting the authorization levels in the early years in order to provide the needed funds to develop the massive programs called for in the early years.

2) Revise the timelines calling for full availability of services for all handicapped children ages 3-21 by 1980 to more realistically reflect the federal support available to aid the states to meet this requirement. 1982 should be the earliest date chosen to meet this requirement. Perhaps 1985 would be more realistic given the immense complexities involved in planning and implementing the services required by the Act.

3) Recognize the administrative burden imposed on local educational agencies in complying fully with the law by setting aside 5% of the local share for supporting administrative costs similar to the state level provision.

4) Remove medical services from the definition of related services as such services, while important, are not generally acceptable as the responsibility of education to financially support and further, to assure that each state have the flexibility to define its own array of related services according to its own state law and traditions as long as such definitions meet the absolute minimum requirements of the federal law.

5) Modify the evaluation requirements imposed on the state to reflect realistic time lines and recognize the complexities in implementing evaluation systems statewide. It is likely impossible to have such data available in the first year of operation of the Act. A two-year planning and implementation period for evaluation should be allowed to assure reliable and valid data to be provided Congress.

6) Appropriate funds under Section 607 of the Act to allow the removal of architectural barriers at a reasonable level as to be useful for this purpose.

7) Clarify the 121a.82 of the Proposed Regulations related to excess costs to allow 94-142 monies to replace monies expended at the local level for services for the handicapped if the LEA has committed the average per pupil cost for the handicapped child and has not reduced its local expenditure for the handicapped and after state and other federal funds have been subtracted from the actual cost of providing the services. Otherwise, it is not clear what costs are actually supportable with monies from this Act.

8) Assure that technical assistance to the states is actually available and rendered as specified in the Act. There are indications that there are insufficient federal staff to meet this requirement.

9) Modify the regulations under 121a.225 of the Proposed Regulations regarding individualized educational programs to under (a) add "where appropriate" at the end of the section in order to prevent unnecessary expenditures of resources for inappropriate areas of evaluation, and under (d) delete the words "determined without regard to the availability of those services" since such a condition would be impossible to meet.

10) Under Section 121.264 of the Proposed Regulations regarding personnel development plan, reduce the scope of this section to more closely parallel the federal statute. This section goes much beyond the statute and entirely too prescriptive, especially in the first years when most of the monies may be expended to meet the needs of the unserved and little monies may be available for personnel preparation programs. It will be possible to increase the requirements later as necessary.

11) Delete room and board costs as a responsibility of education under the definition of "free appropriate education." Again, such costs, while necessary, and required to be borne by the state, are not typically considered educational responsibilities. Care should be taken that "third party" contributions (i.e., insurance and social security) continue to be provided to cover this expense.

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD 62706

JAMES R. THOMPSON
GOVERNOR

October 17, 1977

Received
10/19/77

Senator Jennings Randolph
Chairman--Subcommittee on the
Handicapped
4230 Dirksen--Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

Before your committee on June 22, 1977, the following question was asked, "What is the future of private education facilities which provide services to the profoundly handicapped in your state?" I will attempt to answer your question with the following comments:

Private education facilities have a long impressive history in Illinois in providing services for profoundly handicapped children. Many of these, in fact, were in existence fifty years or more before the state mandated education services to the handicapped in 1969.

Currently, 325 private facilities offer day care and residential placement for approximately 7,300 pupils. For fiscal year 1978, the state will reimburse the private providers of these services $8.4 million. Tuition for private day placements range from $1,250 to $10,450 annually per child; residential placements, from $2,696 to $41,300 annually per child.

If a local school district, in consultation with parents, determines that a handicapped child's educational needs are not being met in the local school, it may place the child in a private facility. Either in-state or out-of-state facilities may be utilized with approval of the Illinois Office of Education. Under current Illinois law, the state will pay only up to $2,500 in tuition costs for private placement.

Obviously, this may be an area in Illinois' special education delivery system which may be in violation of the "free," at-no-cost to the parents mandate of Public Law 94-142.

The total costs associated with providing private, special education services in Illinois are estimated to be $38 million in FY77. If indeed the state were required to pay the full costs of such services, in my best judgment, there would probably be an attempt to accommodate the child in the local school rather than place the child privately.

Senator Randolph
Page Two

The overriding concept in the federal law is the "least, restrictive environment," interpreted to mean mainstreaming the child to the maximum extent possible with his non-handicapped peers. Given the federal impetus to educate these children alongside "normal" children, I believe school officials will feel greater pressure from a variety of sources to bring the child back into the local school setting.

Thus, because of monetary considerations in Illinois and the educational-philosophical premise of mainstreaming handicapped children, I believe the private sector, which now provides services to these children, will experience a decline in population as the state attempts to implement Public Law 94-142.

Sincerely,

James D. Nowlan
Special Assistant to the
Governor for Education

Senator STAFFORD. The final witness this morning is Dr. Leonard Hall, assistant commissioner, Department of Elementary and Secondary Education, Jefferson City, Mo.

In the event anyone leaves before the Chair closes the meeting, the Chair will announce now that the Subcommittee on the Handicapped will continue its hearings on July 12, 13, and 14 in room 4200, if you wish to make a note of that different room number—it is 4200. We will receive testimony then on S. 1712, Rehabilitation Extension Amendments of 1977, S. 1596, National Center for the Handicapped, and amendments to Public Law 94-142, Education of All Handicapped Children Act.

The Chair will not make that announcement again except for the room and dates.

Dr. Hall, we invite you to proceed.

STATEMENT OF LEONARD W. HALL, ASSISTANT COMMISSIONER, DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, JEFFERSON CITY, MO.

Dr. HALL. Mr. Chairman, thank you for the opportunity to be here. Out of respect for your schedule, I will ask that the testimony that I did submit last weekend be placed in the record.

Senator STAFFORD. Without objection, it will be.

Dr. HALL. There is one overriding issue that I wanted to raise with the subcommittee. You will recall in February I had the privilege of appearing before the subcommittee at that time and I described for you Missouri's special education program, and what we think is a comparable mandate and delivery system to that provided in Public Law 94-142.

The overriding concern that we have in Missouri is relative to the church-State issues, the requirement for nondiscriminatory practices relating to private schools. We have constitutional prohibitions pertaining to the use of public funds for the propagation of private schools.

I have learned this morning on the phone that Dr. Martin thinks he has found a way to permit us to receive funds and still satisfy the law. The bureau has bent over backwards not to have school children suffer because of administrative issues. I ask the subcommittee to consider whether or not it meant to place that impasse before us, and if indeed the subcommittee or Congress wants to maintain the church-State language found within Public Law 94-142, and other Federal education laws, that you at least provide for us the bypass provision whereby the Federal Government could go directly to recipient schools and agencies when you find we cannot be intermediate agents as a function of the prohibition. That is the overriding concern we have.

I think the other provisions of Public Law 94-142 which are before you have been covered—well. I think with reference to the testimony you had before, which is all very sound, the comments and conversations throughout the country will probably show that never has so much been said by so many about an issue which they knew so little. No one knows what Public Law 94-142 is going to mean to us.

I would suggest to Congress it be cautious about amending the statute, having participated in writing one and administering one in my home State. I know when we go to the legislature with a package of necessary amendments, it better be a one-time shot.

Finally, I raise the issue of the concern that came before me this morning. I am on vacation, and I am on my way to Disneyland with my family—they did not understand why Walt Disney shouldn't have precedence over the U.S. Senate. We stopped in a southern city, and I flew in this morning and left my family there. I picked up a paper at the airport, and read in the plane the quotes of the chief State school officer of that State who said, they do not want to participate in Public Law 94-142—which we hear a lot of. He made a statement the law was trying to tell us all kids can be educated and there are simply some kids that cannot be. He was quoted using intelligence level of about 35 to 40 IQ. Even if you use IQ quota or criteria, I would welcome anyone here and anyone anywhere, to come to Missouri, and find out what we are doing for those children. I hope it is a misquote. If it was not, I think it reflects a philosophy, an innocent ignorance, if you will, that has to be attacked before compliance can be realized.

If you were to withdraw your mandate, we would lose support that we need in States which can supplement our State laws and serve youngsters, which is the bottom line.

With that, I thank you for the opportunity of being here, and I will be happy to respond to any questions you submit.

Senator STAFFORD. We appreciate your being here, Dr. Hall, and your testimony, which will be very helpful to this committee.

The Chair will repeat that on July 12, 13, and 14 in room 4200, there will be additional hearings of this subcommittee.

[The prepared statement of Dr. Hall and additional material subsequently submitted for the record, follows:]

TESTIMONY PRESENTED TO THE U.S. SENATE SUBCOMMITTEE
ON THE HANDICAPPED
June 22, 1977

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS LEONARD HALL REPRESENTING THE MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION WHICH I SERVE AS ASSISTANT COMMISSIONER, DIVISION OF SPECIAL EDUCATION. I AM PLEASED TO AGAIN BE INVITED TO APPEAR BEFORE YOU FOR THE PURPOSE OF DISCUSSING PL 94-142, ITS IMPLICATIONS FOR THE CHILDREN AND YOUTH WHO WILL BENEFIT FROM ITS PROVISIONS, AND ITS IMPLICATIONS FOR THOSE OF US CHARGED WITH ITS ADMINISTRATION.

THE RECORD WILL SHOW THAT DURING MY TESTIMONY IN FEBRUARY OF THIS YEAR I COMMENDED THIS COMMITTEE AND THE CONGRESS FOR THE COMMITMENT THAT HAS BEEN MADE AT THE FEDERAL LEVEL FOR THE EDUCATIONAL WELFARE OF THE HANDICAPPED CHILD WHICH SUPPLEMENTS THE EXISTING MANDATES IN SEVERAL STATES, INCLUDING MISSOURI. MUCH HAS BEEN SAID, IS BEING SAID, AND IS YET TO BE SAID REGARDING THE PROVISIONS OF PL 94-142 AS THEY AFFECT THE SEVERAL STATES. IT DOES CONCERN ME THAT PERHAPS TOO MANY PEOPLE ARE SAYING TOO MUCH REGARDING AN ISSUE ABOUT WHICH THEY KNOW TOO LITTLE. THE IMPLICATIONS OF PL 94-142 ARE MYRIAD. THE COMPLIANCE DEADLINE IS STILL IN THE FUTURE, YET RUMORS ABOUND ABOUT HOW THIS LAW WILL DELETERIOUSLY AFFECT EXISTING SPECIAL EDUCATION PROGRAMS AND THE ADMINISTRATIVE POLICIES AT THE STATE AND LOCAL LEVEL.

NOTWITHSTANDING THE FACT THAT MISSOURI SHARES A NUMBER OF SERIOUS CONCERNS ABOUT THE IMPLICATIONS OF THIS LAW ON ITS EXISTING PROGRAMS AND ITS OWN STATE MANDATE, WHICH IS ONE OF THE MOST COMPREHENSIVE IN THE NATION, IT IS MY PERSONAL VIEW AND THAT OF A NUMBER OF MY COLLEAGUES IN MISSOURI THAT PREMATURE PANIC CAN SERVE NO CONSTRUCTIVE PURPOSE AND, IN FACT, WHEN UNFOUNDED, CAN SERVE TO ENDANGER CREDIBILITY OF ADMINISTRATORS IN THE EYES OF THE CONSUMER WHOM WE ARE CHARGED TO SERVE.

THEREFORE, WITH ONE MAJOR EXCEPTION, I DO NOT OFFER TO THIS COMMITTEE ON BEHALF OF MISSOURI ANY IMMEDIATE SENSE OF URGENCY TO AMEND PL 94-142 UNTIL SUCH TIME AS WE TRULY CAN SPEAK FROM EXPERIENCE ABOUT ITS EFFECT UPON OUR STATE AND LOCAL PROGRAMS.

SIMILARLY, THE IMPLICATIONS OF SECTION 504 OF THE REHABILITATION ACT OF 1973, WHICH, AS YOU KNOW, ARE INTIMATELY INTERTWINED WITH PL 94-142, HAVE YET TO GENERATE ON THE STATES THE EFFECT THAT IS GUARANTEED TO BE FORTHCOMING. THEREFORE, AT A LATER DATE YOU MAY WISH TO CONSIDER INVESTIGATING THE DOCUMENTED IMPACT OF THESE FEDERAL LAWS UPON THE STATE PROGRAMS SERVING THE HANDICAPPED AND AS A RESULT OF SUCH AN INVESTIGATION PUT THE FINISHING TOUCHES AND THE FINAL POLISH ON YOUR LEGISLATIVE MANDATE.

WITH THIS SAID, LET ME RAISE THE ONE EXCEPTION TO WHICH I MADE REFERENCE EARLIER. THE COMMITTEE WILL RECALL THAT IN FEBRUARY I SUGGESTED TO YOU THAT AS A RESULT OF THE PROCEDURAL

SPECIFICITY OF PL 94-142 MISSOURI COULD WELL FIND ITSELF UNABLE TO COMPLY WITH THE LAW ALTHOUGH ABLE TO ASSURE A FULL SERVICES GOAL AS A RESULT OF COMPARABLE STATE LAW.

IN APRIL THE STATE OF MISSOURI RECEIVED AN ADMINISTRATIVE SITE REVIEW BY THE BUREAU OF EDUCATION FOR THE HANDICAPPED, U. S. OFFICE OF EDUCATION. DURING THE EXIT CONFERENCE CONDUCTED AT THE CLOSE OF THAT WEEK-LONG STUDY, WE WERE ADVISED BY THE BUREAU THAT MISSOURI'S SPECIAL EDUCATION PROGRAM AND ITS OVERALL EFFORTS WERE INDEED SUBSTANTIVE, THAT OUR SERVICES WERE EFFECTIVE AND RESPONSIVE TO THE NEEDS OF THE POPULATION REQUIRING SUCH SERVICES, AND THAT OUR STATE LAW WAS AN EFFECTIVE MANDATE PARALLELING THE PROVISIONS OF PL 94-142. HOWEVER, BECAUSE THE CONSTITUTION OF THE STATE OF MISSOURI PROHIBITS THE USE OF PUBLIC FUNDS FOR THE PROPAGATION OF PRIVATE SCHOOLS, SPECIFICALLY THOSE OF A SECTARIAN NATURE, IT APPEARED IN THE VIEW OF THE BUREAU THAT MISSOURI'S STATE PLAN UNDER PL 94-142 COULD NOT BE APPROVED. WE PROCEEDED TO DRAFT A PLAN AND SUBMITTED IT TO THE BUREAU IN MAY. AS OF THIS DATE WE HAVE NOT HEARD OFFICIALLY WHETHER OR NOT THE PLAN WILL BE APPROVED BUT HAVE BEEN ADVISED ON A NUMBER OF OCCASIONS, UNOFFICIALLY, THAT THE ULTIMATE QUESTION WHICH MUST BE RESOLVED IS WHETHER OR NOT MISSOURI WILL PROVIDE ASSURANCES IN ACCORDANCE WITH PL 94-142 THAT HANDICAPPED CHILDREN AND YOUTH ENROLLED IN PRIVATE SCHOOLS WILL RECEIVE THE BENEFITS OF THE FEDERAL LAW. TO PROVIDE SUCH AN ASSURANCE WOULD MOST ASSUREDLY VIOLATE PROVISIONS OF THE MISSOURI CONSTITUTION AND, THEREFORE, CANNOT BE MADE.

THE IMPLICATIONS FOR THE SCHOOLS OF MISSOURI AND THE CHILDREN WHOM THEY SERVE IN THE EVENT OUR STATE PLAN IS NOT APPROVED COULD AMOUNT TO NEARLY SEVEN MILLION DOLLARS FOR FY 1977-78. THIS FIGURE COULD INCREASE EXPONENTIALLY IN FORTHCOMING YEARS AS CONGRESS INCREASES ITS COMMITMENT OF FEDERAL DOLLARS TOWARD THE LAW IN ACCORDANCE WITH THE FORMULA. AS OF THIS DATE, IN MISSOURI, THE SCHOOLS DO NOT KNOW HOW TO BUDGET FOR THE LAW AND ARE IN A STATE OF DISARRAY UNTIL WE CAN PROVIDE SOME DIRECTION BASED ON THE STATUS OF OUR STATE PLAN.

THE DILEMMA IS NOT WITHOUT IRONY INASMUCH AS MISSOURI IS A STATE THAT HAS SHOWN LEADERSHIP IN SPECIAL EDUCATION PROGRAM DEVELOPMENT AND HAS NOT HAD TO MAKE MAJOR POLICY ADJUSTMENTS TO COMPLY WITH THE FEDERAL LAW. NOW WE ARE FACED WITH A SEEMINGLY NON-NEGOTIABLE BARRIER PROHIBITING RECEIPT OF FUNDS TO WHICH WE ARE ENTITLED. IF CONGRESS WISHES TO ASSIST US IN THIS MATTER, THERE ARE TWO ALTERNATIVES: FIRST, TO RECONSIDER WHETHER OR NOT IT INTENDED TO IMPOSE SUCH AN ADMINISTRATIVE IMPASSE UPON THE STATES: OR SECONDLY, IT MAY WISH TO CONSIDER FOR PL 94-142 A SIMILAR BYPASS PROVISION TO THAT FOUND IN ESEA, TITLE I, PROGRAMS, SUCH A BYPASS PERMITTING THE U. S. OFFICE OF EDUCATION TO PARTICIPATE DIRECTLY WITH PRIVATE SCHOOLS WHEN THE STATE FAILS OR IS UNABLE TO PROVIDE NECESSARY ASSURANCES SUFFICIENT TO SERVE AS THE INTERMEDIATE ADMINISTRATIVE AGENT.

THIS IS A VERY SERIOUS ISSUE FOR MISSOURI, AND IT IS THE ONLY ISSUE WHICH WE ARE RAISING FOR YOUR IMMEDIATE CONSIDERATION. I REPEAT TO YOU ON BEHALF OF THE THOUSANDS OF HANDICAPPED

AND SEVERELY HANDICAPPED CHILDREN AND YOUTH IN MISSOURI WHO ARE PRESENTLY RECEIVING SERVICE AND WHO STAND TO HAVE EVEN MORE IMPROVED SERVICES AS A RESULT OF YOUR COMMITMENT THAT WE ARE GRATEFUL FOR THE ATTENTION TO OUR NEEDS. I ASK YOU TO UNDERSTAND THAT THE VERY REAL ADMINISTRATIVE DILEMMA WHICH I HAVE OUTLINED TODAY IS ONE WHICH MAY SERVE TO HINDER THE DELIVERY OF SERVICES TO THE SPECIAL STUDENT IN MISSOURI, AND IT IS THAT POSSIBILITY WHICH MAKES THE ISSUE SO SERIOUS.

THANK YOU.

LEONARD W. HALL
Assistant Commissioner

DIVISION OF
SPECIAL EDUCATION

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
STATE OF MISSOURI
Jefferson City

July 8, 1977

Senator Jennings Randolph
Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

I am pleased to respond to your letter of July 1 and the questions posed therein.

Specifically, you asked the following:

1. What other states have the same private school problem that Missouri has?

   To my knowledge, there is no other state in the nation which has the same private school issue as does Missouri to the extent that its Constitution clearly sets forth a prohibition against the expenditure of public funds for programs of a sectarian nature and further prohibits administrative interactions between the state and such programs which might lead to excessive entanglement.

2. In February we mentioned the apparent conflict between federally mandated due process procedures and Missouri's due process procedures. You have asked how we have resolved this conflict.

   Subsequent to my testimony before your Committee in February 1977 informal negotiations ensued between Dr. Edwin Martin and me and our respective staffs. As a result of those negotiations we have as of this date tentatively and informally concurred upon the interpretation of applicable and comparable state and federal statutes which may lead to substantive compliance with the federal law while at the same time exceeding but not violating the requirements of state law. The ultimate resolution, of course, will be reflected by the approval of Missouri's FY 78 State Plan which as of this date is still pending. Therefore, although the matter is not yet officially settled, there is every reason to believe that administrative interpretation of statutes by the state and federal agencies in consultation with our attorneys has led to a satisfactory resolution of the problem.

Senator, may I again express to you my continued appreciation and admiration for your concern for the nation's handicapped and their educational welfare. I shall continue to avail myself to you and your Subcommittee in whatever way I may be of service.

Sincerely,

Leonard W. Hall
Assistant Commissioner

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STATE OF GEORGIA
DEPARTMENT OF EDUCATION
OFFICE OF THE STATE SUPERINTENDENT OF SCHOOLS
STATE OFFICE BUILDING
ATLANTA 30334

JACK P. NIX
State Superintendent of Schools

JUN [illegible] 1977

June 23, 1977

Honorable Jennings Randolph
United States Senator
5121 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

I understand that in testimony given on June 22 before the Senate Subcommittee on the Handicapped, reference was made to a "southeast" chief state school officer who was reported in the press as commenting that "...there are individuals who cannot be taught...". I have enclosed for your information a copy of the article that appeared in the June 22, 1977, Atlanta Constitution, regarding a state legislative committee meeting on problem children in Georgia.

The context of my remarks was that there are individuals who cannot be taught in the existing school system structure. Those severely retarded or disturbed children who currently require institutionalization for their benefit cannot be successfully accommodated in local school programs. Facilities for these children do not exist in local school systems, nor is the local staff qualified or capable of providing care and social learning experiences for the severely retarded. Most states, as in Georgia, provide care and educational opportunities in addition to social learning experiences for these children through their mental health programs, usually administered by a state department of human resources or social services. The resources to educate and care for these severe cases are simply not available in most local school systems, and would be far too costly to develop in each school system of this nation.

Georgia is proud of its record in offering educational opportunities for handicapped individuals. We currently expend over $9.00 in state tax revenue for every $1.00 received from the federal level for education of the handicapped in the public schools of the state. Several years ago, the Georgia General Assembly recognized the need to offer educational opportunities to all the citizens of the state, and mandated that by 1977, a full year before PL 94-142 takes effect, all handicapped children would have access to educational programs. The state appropriations to fulfill this mandate have been steadily increasing each year. We have made substantial progress toward the goal of the Georgia General Assembly and of the Congress of offering educational opportunities to all our handicapped children. I am somewhat disappointed that the Congress would pass legislation that in many respects does not recognize state efforts

Honorable Jennings Randolph
Page Two
June 23, 1977

toward this goal, and in some cases impedes the achievement of an educational opportunity for all handicapped children in an efficient and effective manner in each individual state.

Thank you for your interest in the children of our nation and for your concern and help in offering educational opportunities for all our citizens. If appropriate, I would appreciate your including this letter as an attachment to the committee hearings of June 22.

With kindest regards, I am

Sincerely,

Jack P. Nix

Jack P. Nix
State Superintendent of Schools

JPN:bgr

Enclosure

THE ATLANTA CONSTITUTION, Wed., June 22, 1977 7-A

State Urged to Keep Control Of Retarded Child Program

By WILLIAM COTTERELL
United Press International

The head of the state school system and a powerful legislative committee chairman said Tuesday Georgia might lose $7 million in federal funds rather than give up control of a $65 million state-funded program for educating retarded and "troubled" children.

Georgia School Supt. Jack P. Nix told a joint committee on problem children that a new federal law requires the states to provide education for all school-aged children, no matter how retarded or emotionally disturbed they are.

He said about 16 per cent of Georgia children have such learning handicaps to some degree, 3 per cent more than the national average, and that the state spends $65 million on teaching most of those children.

Nix said, however, that some with intelligence quotients below 35 or 40 are too profoundly retarded to be taught—despite any federal requirement.

He said the federal law would provide about $7 million for Georgia, but would require children with IQs below 35 and 40 to be included in teaching programs. Nix said he told Health, Education and Welfare Secretary Joseph Califano that "we'll teach more children more effectively doing it our way" without federal money.

He said several states are "on the verge" of telling the federal government to keep its funding, and operating state programs just for retarded children whose intelligence quotients are above 40.

"I think Georgia should be one of them," said Sen. Paul Broun of Athens, chairman of the Senate appropriations committee and head of the joint "troubled child" task force.

Nix also complained of evaluation and compliance forms required for funding under the new federal law.

"Some of this stuff is just busy work they're asking us to do," he said.

Dr. Douglas Shelton, head of the Department of Human Resources, told the committee that merging mildly retarded and disturbed children into the regular school system may have a classroom impact not seen since the integration push of 15 years ago.

"In some ways, this approaches the push of the integration decision," said Shelton. He said he agrees with the federally mandated purpose of upgrading education opportunities for handicapped children, but is worried that they will be "stigmatized" by classmates.

"There are individuals who cannot be taught, although that may be difficult for some to accept," said Nix. "If a child can't or doesn't want to learn, there's not much you can do about it. You can't hold his head and pour some knowledge in."

Nix said teaching all Georgia's handicapped children would require 2,500 to 3,000 more special-education teachers.

"You're talking about $35 million, at least," said Broun.

"In my judgment, it'll take at least $100 million before we can handle the 16 per cent," said Nix.

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JAMES R. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

July 25, 1977

The Honorable Jennings Randolph
Chairman
Handicapped Subcommittee
Senate Human Resources Committee
U.S. Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed is a letter I have received from Mr. Howard Snortland, Superintendent of the North Dakota Department of Public Instruction, expressing some of the concerns he has about PL 94-142, the law we passed last year to improve education for handicapped children.

I understand your subcommittee recently held hearings on this matter, and if at all possible, I would appreciate your including Mr. Snortland's letter in the record of that hearing. I think he has made a number of important points, and I hope they will be fully considered by your subcommittee.

Thank you for your attention to this matter.

With kind regards, I am

Sincerely,

Quentin Burdick
Quentin N. Burdick

QNB:ahs

THE STATE OF NORTH DAKOTA
Department of Public Instruction
Howard J. Snortland, Superintendent
Lowell L. Jensen, Deputy
BISMARCK, NORTH DAKOTA 58505

July 13, 1977

The Honorable Quentin N. Burdick
United States Senate
Senate Office Building
Washington, D.C. 20510

Re: Senate Subcommittee Hearings on
P.L. 94-142 - July 12, 13, 14, 1977

Dear Senator Burdick:

As a member of the staff of the Department of Public Instruction for a quarter of a century, and as State Superintendent of North Dakota, I have been committed to improving special education programs and services for the handicapped children in the State of North Dakota.

Our extensive experience and efforts have been both rewarding and painful. Our "reward" is exemplified by the thousands of additional handicapped youngsters in North Dakota who are receiving for the first time an "appropriate" educational program. Our "pain" is embodied by all of the frustrations and lack of understanding on the part of many groups of people--legislators, fellow educators, taxpayers, and the general public--in the drive to fulfill the goal of appropriate educational programming for all youngsters, regardless of their handicapping conditions.

As a Chief State School Officer, I am appreciative of the efforts Congress has made to assist the states in fulfilling their responsibilities to handicapped children. P.L. 94-142 is a landmark piece of legislation which addresses the educational rights and needs of handicapped children. The law is comprehensive; it can be implemented; and, in my opinion, will ultimately achieve its purpose. There are issues concerning this legislation, though, that need to be refined in order to strengthen and facilitate its implementation.

Before proceeding with specific reactions to P.L. 94-142, however, I would like to explore in a general way with you some ideas and concerns that many of us who are state officials have relating to the proper role of the federal government in educational matters.

This very issue was discussed at some length just last week during the Eleventh Annual Meeting of the Education Commission of the States in New York City. Similar concerns have also been discussed, I am told, at recent meetings of the other state-oriented organizations.

Specifically, ECS members, in a Policy Statement adopted at that meeting, suggested that the federal role in education should be:

1. To enunciate national goals, objectives and priorities that may transcend the concerns of individual states or the capacity of states to resolve or respond to them acting individually;
2. To see that national goals, objectives and priorities are attained through federal policies which supplement and complement state efforts to meet the same needs and to give states assistance and incentives to meet national goals in the context of differing state circumstances.

It is the negative issues, the extreme prescriptiveness of P.L. 94-142, and some of the unrealistic mandates of the law that are of grave concern to me.

1. The "full implementation by September 1978" provisions of the law (Sec. 612 (1)(B)) I consider an unrealistic mandate.

   In order for a state to receive federal funds, P.L. 94-142 mandates that "a free appropriate public education will be available for all handicapped children between the ages of three and eighteen . . . not later than September 1, 1978." The maximum age is increased to twenty-one by September 1, 1980.

2. The federal funding authorizations for fiscal years 1978 through 1982 (Sec. 611 (a)(1)(A)(B)(i)(ii)(iii)(iv)(v)), I consider to be inconsistent with the provisions listed in "1" above and are hardly commensurate with the explicit mandates of the law.

   The pattern of funding authorization is not consistent with the needs of the states. As the states move to achieve the two compliance goals--1978 and 1980--they will need massive infusion of funds FROM ALL LEVELS. It would seem reasonable that the federal government ought to become a full partner during these compliance efforts.

3. The provision that the state educational agency shall have ultimate responsibility for "assuring" the adequacy of all educational programming for the handicapped even though other state agencies are mandated by state laws to have a "piece of action" (Sec. 612 (6)).

   The State Education Agency should have responsibility for the coordination of all programs for the handicapped. The language of the assurance in the Federal Act should be amended as it suggests that we must act through administrative fiat to control all programs for handicapped children. This is not an appropriate goal for a national or state agency.

4. The "pass through" provision of federal funds to individual local educational agencies (50% the first year of implementation and 75% thereafter) (Sec. 612 (b)(1)(2)(c)(1)(2)), I consider to be overly prescriptive and destructive to some states' efforts to achieve some semblance of financial equity among their local educational agencies.

   Federal dollars continue to be channeled into specific types of developmental assistance, such as teacher preparation, programs for multiply handicapped children, and state administration of special education programs.

5. The individualized educational program provisions (Sec. 602 (19)), I believe to be potentially legally explosive.

   Specific language should be included in the Act to assure that Individual Plan Education is an educational plan and not a binding contract between the state, the student, and the school district. Specific types of related services should not be prescribed by federal regulations but be limited to those services which are consistent with state statute or practice.

Sincerely,

DEPARTMENT OF PUBLIC INSTRUCTION

HJS:cba

H. J. SNORTLAND, Superintendent

NS
BA
NATIONAL SCHOOL BOARDS ASSOCIATION
1055 Thomas Jefferson Street, N.W. • Washington, D.C. 20007
(202) 337-7666

Statement on behalf of the

National School Boards Association

on

The Education of All Handicapped Children Act

Submitted for the Record

to the

Subcommittee on Handicapped

U. S. Senate

September 8, 1977

Introduction

The National School Boards Association is pleased to have this opportunity to submit a statement to the Subcommittee covering the Education for All Handicapped Children Act. The National School Boards Association is the only major education organization representing school boards members — who are in some areas called school committees or school trustees. Throughout the nation, approximately 80,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than ninety-five percent of the nation's public school children.

Currently marking its thirty-ninth year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Most of these school board members are elected public officials. Accordingly, they are politically accountable to their constituents for both education policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge legislative programs, purely on the standpoint of public education, without consideration to their personal professional interest.

Association policy is determined at the NSBA annual convention at which representatives from across the nation translate policies and resolutions into ongoing programs.

In anticipation of the first year of implementation of P.L. 94-142, we would like to bring the following points to the Committee's attention in summary manner. In addition, we recommend oversight hearings during the program's first year of operation to investigate issues which might arise, including those discussed below, during implementation.

Funding -- While the cost of complying with P.L. 94-142 program requirements and section 504 civil rights obligations within the next two years are not known in detail, all indications are that the cost to local districts will substantially exceed federal assistance for handicapped children. Accordingly, our Association strongly urges an immediate increase in the federal contribution under P.L. 94-142 to 40% of the national average per pupil expenditure.

Cumulative Count -- Under current law children receiving special educational services on October 1 and February 1 during any school year are counted for the purposes of federal funding. A number of children receiving special education services may pass in and out of a handicap program during the academic year, but these children may not be counted unless they are receiving services on the specified reporting days. Our Association would support a "cumulative count" method which could account for such children.

Local Entitlement -- Our Association endorses the local entitlement provision because it 1)provides certainty in yearly funding levels, 2)avoids possible inequities which could occur as a result of grantsmanship and state politics, and 3)provides a most effective means of delivering a free appropriate public education to handicapped children in locally operated programs.

Equalization -- Certain state level organizations maintain the grants to local districts (comprising 75% of a state's allocation) would, in certain instances, disrupt state efforts to equalize school expenditures. Our Association feels that the importance of the federal local entitlement approach greatly outweighs any inconsistencies with specific state equalization plans--especially since various provisions of the Act adequately anticipated the impact on state equalization. Specifically, we feel the Act addresses the equalization issue in the following ways:

1. States may use their 25% set-aside for equalizing expenditures.
2. State legislatures may adapt their state aid formulas to the federal formula.
3. Congressional intent was not to equalize state expenditures but was to serve all handicapped children in such a way that federal funds would

   > "supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds." (See sections 614(a)(2) and 613(a)(9) of the law.)

4. In the event the state educational agency determines that a particular school district had adequately provided a free appropriate education to all its handi-

capped children without expending all of its P.L. 94-142 funds, the State agency may reallocate such unexpended funds to other school districts. (See section 614(e).)

Procedural Safeguards -- Many states already have laws to protect the rights of handicapped students and to guarantee those students an appropriate education. Flexibility should be provided under the Federal law so that, where appropriate, states with comparable safeguards could be allowed to incorporate those procedures in their state plan in place of the currently required procedures.

Data Collection -- School districts are already responsible to the federal government for a significant amount of data collection and reporting requirements. Our Association strongly recommends that the data collection and reporting requirements associated with the excess cost, comparability, individualized plans and the pupil placement provisions be reviewed after the first year of operation to determine if the amount or level of detail of the data collection can be reduced. Specific points regarding data collection in several of these areas are discussed below.

Individualized Education Plans -- Our Association supports the decision reached by the Congress in enacting P.L. 94-142 not to regard the goals contained in the individualized education plans as a "contract" for specified educational results. No school district can guarantee a specified level of educations achievement for a given child. Furthermore, we support the final handicap regulation issued by the Office of Education which closely tracks the statutory provision regarding a description of specific special education services to be provided to a handicapped child.

Civil Rights -- The exact relationship between section 504 of the Rehabilitation Act and P.L. 94-142 will be evolving over the next several years. In the administrative give and take between the Office for Civil Rights and the Office of Education, school boards may well find two administrative units within HEW establishing divergent policy directives. In an analogous experience involving Title VI of the Civil Rights Act and the Emergency School Aid Act, school boards have made staffing and monetary commitments according to the policy directives of one adminstrative unit regarding reduction of racial isolation and the provision of bilingual education, only to find themselves in possible violation of policy directives of another administrative unit. This situation of conflicting policy statements is quite likely to occur with federally assisted handicapped programs in light of the section 504 assurance. Under this assurance, school districts must agree to abide by the law, the regulations, "and all guidelines and interpretations issued pursuant thereto." Our Association objects to the quoted language above because school districts are being asked to abide by guidelines and interpretations which have yet to be issued and which could very easily conflict with policy directives issued by the Office of Education.

In the interest of Congressional oversight, our Association would suggest the following guidelines with regard to the operation of local handicap programs:

1. The Office of Education should have sole responsbility for policy decisions which might directly influence the content of local instructional programs.
2. The Office for Civil Rights should have primary responsibility for determining if handicapped individuals have been "excluded from participation in, (been) denied the benefits of, or (been) subjected to discrimination under any program or activity receiving federal financial assistance."
3. A failure to meet a process-oriented mandate of the P.L. 94-142 program, such as the comparability or excess cost requirements cannot be viewed, in and of itself, as a civil rights violation.
4. A refusal to accept federal aid under P.L. 94-142 cannot be viewed as a prima facie violation of section 504 civil rights obligations.

Supplanting and Comparability -- The "no supplanting" and "comparability" provisions of the statute, and as further defined in the final regulations (45 CFR 121a.230 and 121a.231), appear to be unnecessary, inconsistent, and counter-productive to the basic approach of P.L. 94-142. After consultation with HEW staff and for the reasons outlined below, our Association recommends elimination of these two provisions. In light of the September 1978 "full service" date, maintaining these provisions is unnecessary and will only produce confusion among school districts and will open the possibility for numerous audit exceptions while not contributing to, and perhaps detracting from, the quality of services offered to handicapped children.

Unlike ESEA Title I (from which these provisions were fashioned), the Handicapped Act provides particular services to individual children and was not intended to provide a program of instruction to a general category of children. For this reason, under the Handicapped Act the "no supplanting" standard must apply to individual children. However, the statutory requirement that federal funds supplement, and in no case supplant, "the level of State and local funds expended" (past tense, see section 614(a)(2)(B)) for "programs" under the Act seems unnecessary and, perhaps, confusing for several reasons:

1. The proper level of State and local funding is actually measured by the average per capita amount of State and local funds (45 CFR 121a.230 (b)(2)). This test of the average per capita amount of State and local funding is adequately protected by the test contained in the definition of "excess cost".
2. The Handicapped Act does not establish "programs" , unless each child's individual educational plan is viewed as a program.
3. The use of the past tense "expended," as opposed to the conditional past tense "would have expended" (as in Title I statute) implies a constant standard to some time in the past prior to the passage of P.L. 94-142. The effect of which, according to the regulations, is that "the Commissioner looks to

> see if Part B funds are used for any costs which were previously paid for with State or local funds." (See the comment under 45 CFR 121a.230) This would appear to mean that if a particular instructional practice or material used to provide handicapped services were ever purchased with State and local funds, replacing or increasing same with P.L. 94-142 funds would be prohibited indefinitely. The bookkeeping and the program restriction on increasing potentially successful educational practices or materials seems to have no beneficial effects on providing handicapped services.

With regard to the comparability requirement in the statute, and as further defined in the final regulations, the basic approach of the Handicapped Act, again, does not lend itself to a productive definition of comparability. While the statutory language is very similar to that contained in ESEA Title I, the Handicapped Act does not establish projects in schools in target areas which may be compared to schools in non-target areas.

According to the "comment" in section 121a.231 of the handicapped regulations: "Under the 'comparability' requirements, if State and local funds are used to provide certain services, these services must be provided with State and local funds to all handicapped children in the local educational agency who need them." This provision appears to have the same meaning as the "no supplanting" provision, with the exception that services once offered with state and local funds must be provided to all handicapped children indefinitely from State and local funds.

After the full service mandate is in effect, in September, 1978, it would seem unnecessary to specify what portion of which special education services must be provided from particular local, State, or federal sources of funding.

Our Association supports the basic goals of the Education for All Handicapped Children Act. We endorse the local entitlement approach for delivering special education services to handicapped children at the local level. Because the Act is new and employs a comprehensive approach to the education of handicapped individuals, we urge the committee to conduct oversight hearings during the program's first year of operation to determine if any changes are needed in the statute. In this statement we have given some suggestions as to what issues might warrant special attention during oversight hearings. If the subcommittee has any questions on the issues raised in this statement, or other aspects of the Handicapped Act, our Association would be pleased to provide further information.

Senator **Stafford**. With that statement, the Chair will announce that the subcommittee is in adjournment until July 12.

[Whereupon, at 11:35 o'clock a.m., the hearing was adjourned to reconvene on July 12, 1977.]

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